



















*Theodore Bailey*  
**CLAIMS**

**On the United-States,**

**BY THE**



*ate Contractor for the State of New-York, &c.*

**FOR SERVICES DURING THE**

**LATE WAR.**

*Theodore Bailey*

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**NEW-YORK,**

**1824.**

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By transfer

DEC 30 1915

## INTRODUCTION.

*When claims to a large amount are placed in appeal before the President and Heads of Department, they necessarily call for the examination of a multiplicity of documents, which, when in manuscript, appear tedious, and are read with great difficulty by the Tribunal to whom appeals are made. Nor will the other important concerns of the executive Department admit of time for the satisfactory perusal of a mass of separate vouchers and papers.*

*With a sincere desire to give the Government all the information relating to his claims, the present claimant has been induced to place before the proper Tribunal his case in its present shape. In the exercise of that liberty which belongs to every independent mind, he has made such notes and remarks on other documents as have an immediate bearing on his claims, as the necessity of his defence required.*

*In our defence, we may be allowed to express our wrongs with honest indignation, especially if principles are set up in bar of our just rights ; and opposed, as we believe, to every maxim of law and reason. The mistakes of the 3d Auditor may be excused, but to attempt to invalidate a contract and principles established in a former settlement, is an abuse of power, that immediately concerns the nation's honor and the peace of society. The present claimant, however, disclaims any disrespect to the authorities of Government, or any considerations but those of personal regard to the Accounting Officers.*

*Every person is interested in all pecuniary claims upon the United States, and as each contributes a portion to the national treasure, so every citizen must rejoice in the administration of strict and impartial justice, in whatsoever relates to the distribution of the public funds.*

*These Documents, Correspondence and Remonstrance, were not commenced or printed with any view of being placed before Congress or the public, except only, in an eventual appeal to that august body for a redress of grievance from the decisions of the Accounting Officers of the Treasury Department. This is the right of the humblest citizen as exercised in the most arbitrary governments. And under the peculiar circumstances of the present case, should the claimant be driven to seek for justice to the highest Tribunal prescribed by the Constitution, altho' he might reasonably complain—still he only regrets the delay which has resulted in the loss of a session of Congress. But as the gentleman who now presides over the War Department has declared he will decide, and decide promptly on all the claims and that the present claimant should receive the benefit of every decision as granted to others in similar cases; the undersigned rests his cause with perfect confidence of receiving eventual justice.*



## REMONSTRANCE, &c.



THE undersigned, late Contractor for the supply of the Troops and Armies of the United States during the late war, having suffered many grievances, in consequence of that rule of justice and equity being withheld from him, which is believed to have been administered to others by the proper department, is now compelled to make known, in a solemn and condensed form, his manifold wrongs, and to appeal for redress to the well-known justice of the Government, under the decisions, laws and Constitution of his country.

And notwithstanding the presumed popularity of the third Auditor, who has rejected his claims or referred them to the second Comptroller, the undersigned will fearlessly and positively declare, before God, his country and the world, that the third Auditor has been guilty of manifest perversion, in his construction of the Law and the Contracts, of misstatement of facts, and is false in his premises and principles, and erroneous in his arithmetical statements.

That he has assumed dictatorial powers in equity, which alone have been exercised and belong of right to the War Department, or to Congress.—(*See note A.*)

That he has denied, that the casks and packages have been paid for by the United States, in the settlement of

Contractors' accounts, when the facts are fully recorded that for troops on the march, or on board of transports, casks and packages have been always paid for at a fair valuation.—(B.)

He denies to the claimant a general principle involving the payment of casks in past cases as not applicable to the present, differing only in the amount of the claim.—(B.)

That when packages have been captured by the enemy, or destroyed by the troops of the United States—which packages and boxes are requisite and necessary for the transportation of the provisions, he denies that they should be paid for, when the sixth article of the contract expressly provides for the payment.—(B.)

He denies to the present claimant the same justice and equity that has been granted by an original and general decision of the War Department, dated October 13, 1814, granting pay for casks and packages to another claimant.—(B.)

He allows no validity to the decision of the Honorable Secretary of War, of 27th January, 1816, directing in general terms the accounting officers to grant all contractors' claims for requisitions made on the contractors, which requisitions were not authorized by the contract.—(C.)

He denies the claimant official copies of decisions of the War Department, made in other cases for similar and like compensation, which decisions by every rule of this Government, are the property of the people, and every citizen is entitled to a copy who has claims on the United States.—(D.)

He denies to the claimant official copies of his own documents, which documents are of vital importance in the prosecution of his claims.—(D.)

He denies a condensed report of the gallons or gills of Whiskey actually furnished by the claimant to the use of the United States after the passage of a law by Congress laying a tax on Whiskey distilled within the United States, and that he has insulted the honor and dignity of

the United States, by alledging that he will not furnish documents that may raise or establish charges against the United States.—(D.)

That instead of referring, as justice and humanity would dictate, the party aggrieved by an act of Congress, passed 24th July, 1813, (laid for wise and beneficial purposes) to that august body for redress of the grievance, which act to the party aggrieved was "*ex post facto*," and unequivocally *impairs their contract* to the full amount of the Tax, he has arrogantly dismissed the claim by that favorite and magic word, "*inadmissible*."—(E.)

That he has erroneously alledged that the late contractor received 12 1-2 per cent, the wastage on the gross amount, and one cent for the issue of each ration of the provision delivered on board of transports in the descent of the St. Lawrence, in 1813, as well as on the net amount issued on the termination of the expedition, when in *fact* no credit has been granted to the late contractor for the perquisites on the *gross* or *net amount* of provisions issued, although the services and duty were performed by the Agents of the contractor, by the express orders of the commanding General.—(F.)—He has denied the late contractor compensation for being compelled, contrary to every stipulation of his contract, to receive an excess of 306,338 Rations of Flour over the other component parts of the rations left in deposit by Augustus Porter, and British captured Flour :—That the damages for this breach of the contract is at a moderate estimate \$9,190 14 cents, and that the contractor was not bound to issue any of the above deposit.—(G.)

That the general decision of the War Department, of 27th January, 1816, requires the *accounting officer to grant damages for the issue of provisions not warranted by the contract*.—(G.)—That the third Auditor has objected to this claim, by alledging that the contractor received the provisions without objection, when it must have been well known that he *did* object, and protested against receiving the provisions in unequal proportions, and that his letter of protest was duly

received, and a copy filed in the records of the War Office.—(G.)

That he has irrelevantly replied to this claim, by insinuating that the claimant left a deposit in unequal proportions, and instances one place of deposit only ; whereas, had he stated all the circumstances, it would have been seen that the general mass of deposits left by the contractor was in equal proportions, or nearly so, within the state of New-York ; and that they were received *by the order* of the War Department, and that this constituted no complaint on the part of his successor, or objection on the part of Government, is admitted, but, on the contrary, he, W. D. Chever, successor to the present claimant, acknowledges emphatically in an official letter, directed to the accountant's Department, *that the deposits being unequal in the component parts constituted no objection on his part, and that he was bound by his contract to receive them at any place or post, and that these deposits were essential to the fulfillment of his contract with the United States.* And yet the third Auditor has denied to the present claimant an official copy of W. D. Chever's letter, so essential to the refutation of the improper remarks of the third Auditor.—(H.)

That he has erroneously alledged, that, in September, 1815, and in January, 1816, when the contractor actually received payment of monies long due him from the United States, the contractor was not a sufferer.—He unblushingly alleges, "the deferred payment was made in September 1815, in treasury notes, believed to be from 3 to 4 per cent above par," when in fact full testimony has been given in certificates of Messrs. Prime, Ward, and Sands, and others, that treasury notes were at that time from 3 57-100 to 11 per cent below specie ; and in truth treasury notes were not known to be above specie at any time.—(I.)

That the contractor furnished a certificate of the cashier of the State Bank at Albany, showing \$7,339 22-100 to have been paid by him in interest for funds borrowed to purchase Government supplies, between 1813 and



1816, a small part having been borrowed in 1813 :— That in objecting to this claim for interest, the third Auditor has disingenuously asked the second Comptroller, “if interest can be claimed on loans made in 1813?”— Thus substituting the minor for the major proposition.— (κ.)—Contrary to the rule of truth, and every principle of justice.—(κ.)

That the third Auditor has not replied or remarked to the claim of the contractor in his letter of 18th September, 1823, for damages and interest on his protested and dishonored bills drawn on the U. States, in 1814, for 200,000 Dollars.—(κ.)

That he has disregarded the unqualified instructions and general decisions of the War Department of 27th January, 1816, which thus directs : “ *The accountant in settling the accounts of contractors for 1814-15, will allow all claims, supported by evidence, of loss sustained by payment of interest, or damages in consequence of the Department being unable to make the necessary advances.*”

That he has been in the habit of calling on the Secretary of War for special decisions, making special what ought to be general, and by his own confession purposely concealing those decisions from the public by burying them in the mass of documents of his office.

That in suspended claims for hides of bullocks captured or destroyed by the enemy, which bullocks were slaughtered on the Niagara frontiers for the use of the army, he has said, that they must not be paid for, because the *hide* was not *necessary* to the transportation of the bullock, although the third article of the Contract declares that all articles necessarily used in transportation, shall be paid for at a fair price or valuation ; this claim for \$1750 was suspended in former settlement of 1815.

That he has denied the opening of an account for the correction of an error, *in fact*, if the correction should operate against the U. States, and constantly pleads a settled or concluded account (L) against a solvent claimant, for an unsettled item or balance, and for a service

proved and admitted, continually repeating "the account was closed, and finally disposed of by a former settlement,"—and although the balance claimed was for a distinct service, and equivalents rendered, and not embraced in former accounts. Yet he has suggested to the second Comptroller, and given his opinion, that a principle (*not an error*) involving a construction of the Law or Contract, may be overruled *against any person* who has or may have pecuniary transactions with the U. States, at any period however remote, and although they may have been settled by and passed the ordeal of the Treasury department, and the competent authorities of this Government, provided they go as an offset or a charge to an individual claimant, to the prejudice of his reputation, the injury of his repose, destruction of his property, and to the ruin of himself, his friends, and family: thus virtually impeaching the previous acts of this government, by calling in question the principles and decisions of the War department, as his caprice or whim may dictate; making his own statement of facts, and construction of contracts, to suit his own views and to meet his own wishes.---(See his suggestion to second Comptroller.)

That the exercise of such an awful prerogative is tyrannical, dangerous, and oppressive, and in the language of enlightened and impartial civilians "such pretensions alone are dangerous as precedents, alarming and oppressive to every citizen, destructive to the peace of society, and of the civil institutions of our country, established by a profusion of blood and treasure: such principles may, indeed, save the nation's money, but at the expense of the nation's honor, and at the sacrifice of the known laws of the U. States, and of the common law of the land.

That, in the assumption of those unheard of powers he has wilfully or blindly committed the grossest errors and blunders, admitting, (which is totally denied) the new principle which he has set up as the rule which ought to have governed the former settlement.---(See his statement.)

That he has stated, that 768,320 rations of flour, deposited under the claimants contract, dated Nov. 7, 1811, which he was ordered to take up within the existing period of that contract, and which consequently could only be charged with the money price of the rations, should have been debited to him at the money price of the *subsequent* contract of the 25th of Feb. 1813, when he must have been blind, or else have known that the first contract made no stipulation, condition, or provision to carry the balance of supplies, if any, to the next contract, and that the second contract made no stipulation, condition or provision to take up inventory, or issue any rations left on hand from the first contract, and consequently the government could only charge the money price of each ration to the contractor under the special contract; (M.) that they did so, to the disadvantage of the contractor, by charging the gross amounts of deposits, at original places of deposit, instead of *distant and subsequent places of issue*, making the contractor responsible for losses by carriers, boatmen and teamsters, and all wastage and natural decay in transit, and lastly, *underwriter* for all hazards by sea and land: and this position and settlement made nine years since were assumed by the present third auditor then chief clerk, who now or lately has declared that the contractor had claims on the United States to the amount of \$100,000, but he would ransack other offices to see if he could not raise offsets, or establish new principles for the government of old settlements, and that such new positions and principles were the converse of all laws, and highly derogatory to the justice, honor and dignity of the United States. (N.)—The following is an abstract of his blunders on this head;—Taking as premises, that the provisions (4410 barrels of flour) making 768,320 rations of 18 oz. charged by the United States at the contract price of 7th Nov. 1811---4 cents, should have been charged at the contract price of 25th Feb. 1813 7 1-2 cents, making a difference of \$22,509 40-100, which statement is *erroneous* and not founded in the contracts---that of the *above* 768,320

320 rations of flour 348,444 4-9ths contained in 2000  
 barrels, were baked into hard bread at the expense and  
 by order of the United States in April 1813 and estimat-  
 ed at the rate of 175 lbs of hard bread for each barrel of  
 196 lbs of flour, which at the rate of 12 oz. the ration  
 makes 466,666 5-9 Rations  
 Deduct therefrom the above, - - 348,444 4-9 ..

And there remains - - - 118,222 1-9 ..  
 which is the true excess of Bread rations, calculating at  
 12 oz.

The net amount of which, at 7 1-2 cents after deduct-  
 ing perquisites of issue, is - \$7,315.

Instead of which, the third auditor has raised a charge  
 of 466,666 5-9 Rations, at 7 1-2 cents, net amount of  
 which is - - - \$28,375 00

And credited 348,444 4-9ths Rations at  
*four cents instead of seven and a half*  
 cents, - - - 11,324 44 4-9,

Leaving a balance of - 17,550 55 5-9.

These 348,444 4-9 rations, at the price  
 of *seven and a half* cents, amount to 21,560 00

From which deduct the amount above  
 credited, - - - 11,324 44 4-9,

And there appears a difference and } of 10,235 55 5-9,  
 a gross and palpable error

The true balance being as above stated, 7,315 00

This palpable error and attempt of charging 466,666  
 5-9th rations of Bread, when 348,444 5-9th rations of  
 the same, were before charged, in the 766,320 rations  
 above, *if his new and unheard of principles* had been  
 correct, might have involved in utter ruin, a citizen in-  
 competent to detect the error, and whose fortune was  
 unequal to the amount, and yet this arithmetical state-  
 ment of the third auditor is exhibited in all the formality  
 of due deliberation, and of debit and credit after a long  
 and protracted investigation; to the great scandal of his  
 department, and in direct impeachment of his boast-  
 ed competency and correctness. And again,



The third Auditor has forgotten, or been ignorant or blind to the unqualified provision and stipulation of the contract referred to, viz. That the choice of issuing *Bread or Flour* is *expressly* five days in the week with the contractor, and if any gain is made by issuing bread instead of flour, it is decidedly at the option of the contractor to receive the rations of flour instead of bread, which was the case, and was so charged and *settled* by the United States in 1815.

The Government in no instance can demand a surrender of, or wrest from the contractor a right guaranteed by an express stipulation of his contract, because it may be to their advantage to do so. And if they bake their deposit flour into hard bread by their own agents, to save it from consequent decay or condemnation, as was the case, they cannot compel him to receive it, except as flour at 18 oz. ; because the right of baking all flour has been acceded to the contractor, and the express and positive right to issue flour or bread is secured to him "five days in each week ;" and, should he have been compelled by any arbitrary proceeding to receive it baked into soft or hard bread, he calls upon the third Auditor to say by what legal rule of the contract it could have been charged to him, *at any time*, at any other rate than the money-price of the contract, 4 cents, and at the rate of 18 oz. for each ration, and not at 12 oz. as stated by the authority of the third Auditor.

The only legal and true construction of the contract is then, that if the Government by the EXPRESS consent of the contractor, assumes the right of baking the flour into bread, and afterwards calls upon the contractor to take it and issue it, they could only charge the same at the money-price of the contract under which he was *bound* to receive the same, which contract was that of 7th of November, 1811, at 4 cents, and at 18 oz.—The result would be as follows: 348,444 4-9th rations of flour contained in 2,000 bbls. baked into hard bread, and *are said* to have been delivered to the contractor's agent at 175 lbs. of hard bread for each barrel, making 350,000 lbs.

which at the legal rate of 18 oz. for each ration is, 311,111 11-100 rations, amounting to, after deducting wastage and percentage of issue at four cents—\$10,111 11 11-100.—Now the U. States have by their *own act* charged the contractor in the settlement of 1815 with the same rations at 4 cents, deducting perquisites of issue, wastage, &c. \$11,324 44 4-9th—so that the third Auditor stands convicted of involving the Government in an error, which, if corrected, will now be to the debit of the United States, and to the credit of the contractor of \$1,213 33 33-100.—Yet the third Auditor has wilfully or blindly, attempted to impeach the former settlement of his predecessor, which settlement was legally in favor of the United States.\*

The late contractor cannot close these remarks without stating that he holds the principle to be self-evident, that the Government, in the settlement of every item in accounts with individuals, are bound to sanction the acts of their authorised functionaries, and make them valid ; and it would be a contradiction to usage, to the common law, and to reason, to suppose that the power of a new Secretary of War, after a lapse of years, or a new Auditor, could nullify the official acts of his predecessor. This indeed would be assuming a prerogative that Legislative bodies seldom have exercised, and which is forbid by sound policy and justice.—(BUT AS TO HIS

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\* 12 oz. pork and 18 oz. of bread or flour is a ration between the contractor and the United States. The officer of the Army may say, (from his own option or pleasure) "I will receive 8 oz. of mess pork and 12 oz. biscuit in lieu of prime pork or soft bread."—But the original condition between the U. States and the contractor is the rule of settlement.

The premises of the third Auditor are based on the *presumption* that the contractor commuted with the officers at 12 oz. of hard bread in lieu of 18 oz. of soft bread, and that he ought therefore to be charged for the provisions delivered to him at the same rate—which, to say the least of it, is an assumption not warranted by the contract or the facts ; he might as well say, the contractor has often times commuted with the officers by giving them money in lieu of provisions, therefore the contractor shall account for rations we have delivered him, at the rate of the commutation, instead of the money-price of the ration. Now the rations when delivered to the contractor are charged to him in *money* and *not in kind*, with the wastage and perquisite of issue first deducted—and, according to the usage and rules of settlement, he is only accountable at the money-price of the contract under which he received them.

OWN CASE, HE SCORNS TO PLEAD A SETTLED ACCOUNT, IF IN THAT SETTLEMENT *an error in fact* HAS BEEN MADE AGAINST THE UNITED STATES.)—That, however, he denies, and confidently rests on his reply to the third Auditor of 6th October last, as a full and complete refutation of the new principle set up by him.—(*See opinions of Spencer, Kent, and Emmett.*)

Let us calmly look back and see what the contractor has done to deserve the evasions and procrastinations of the third Auditor. Let us see whether the official acts of the injured party have not been marked with a spirit of consistency and honor, that stamps the suggestions and remarks of that officer with a character that would violate the public faith, prostrate the laws, and destroy one of the fundamental and sacred principles of the Constitution.—And is the painful silence, the patient forbearance under the wrongs which the undersigned has so long and so seriously suffered, never to end?

Has the late contractor ever received any compensation from the United States, as acting Quarter-Master, for himself or his agents, for the transportation of public supplies on the waters leading to Lake Ontario, during the late war, and on the northern frontier after the disaster of the Campaign of 1813.—(*See Orders of War Department and correspondence.*)

Was not the transportation done with economy, at reduced prices, and with a full and entire accountability for all the articles transported; and did not the late contractor assume in the absence of store-keepers, and in the deficiency of the staff, the gross amount of public provisions at the original place of deposit, instead of subsequent and distant places of issue, thus saving the United States from the loss of a single ration?—(*See forms and manner of transportation, &c.*)

Have the United States or their officers ever legally charged the contractor with a default or deficiency of supply under the trying exigencies of the times, and the distant position and places and post of issue?—(*See letter of James Madison, late president; John Armstrong;*

*late Secretary of War, and Major-General Macomb,*

Have the profits exceeded a reasonable compensation, and under all the hazards of numbers, amount, and a long year of prospective uncertainty, have they been commensurate to the profits of an ordinary mercantile transaction?

Has the ration within the State of New-York cost the Government over the contract price, and was not that price low, when compared to the then high price of provisions?

Have not the terms of the contracts made by him since 1809 been the lowest, and have not the proposals been public, fair and open to every competitor, and have they not always been promulgated to the people several months before they were made?

Did he not in his first contract with the United States sacrifice 1 cent and 2 mills on each ration for a period of seventeen months, by being compelled to take less than his original proposal, notwithstanding that original proposal was two cents per ration less than any other legal bid?—(o.)

Did he not relinquish seven mills on each ration for the port of New-York and for Greenbush, in his last contract of 25th February, 1813, with a spirit of consistency and liberality, and with a view of conforming to his original proposal, when in fact that proposal was not accepted at the time, and the subsequent rise in the price of provision authorised the additional price? Let official documents speak—(*See letter of 10th September, 1823, to the third Auditor.*)

Did he not sustain the land transportation of Eighty Thousand Dollars value of Flour and Whiskey from southern Atlantic ports to New-York, when the coast and harbor were effectually blockaded, and had he shipped them as he had a right to do by the consent of the Department, and by the stipulation in his proposal, the whole would have been captured, and the loss of the U. States would have been to the full amount of the shipment.—(p.)



Did not the acting secretary of War, and secretary of the Treasury offer and invite proposals to receive subscriptions to the loan of twelve millions, in 1815, and by his letter to the present claimant agree to take the Warrant then due by the United States to the amount of 181,000 dollars as a part of the subscription aforesaid, 100 in stock for 95 of the debt, and when the proposal was accepted, was the stock given, or a satisfactory explanation, for this breach of faith?—(*See secretary A. Dallas' letter.*)

Did not General Wade Hampton invade and usurp the right of the contractor, jeopardise the campaign of 1813 by establishing a military commissariat, and has full indemnity been granted, although Government acknowledge the outrage, and *have* granted a part in mitigation?—Balance due \$4,500.

Did not the contractor relinquish the perquisites of 12 1-2 per cent, and one cent for issue for all the large amount of provision deposited by him, and left on hand on the 1st of June, 1814, which percentages were his by law and by contract, and would have amounted to a reasonable profit of \_\_\_\_\_ and was not this waived to the advantage of the United States in their new contract, or contemplated commissariat? And what has he received in return? Let facts and an impartial people testify.—(*See letter 10th Sept. 1823.*)

Has he ever asked a favor of any administration, or required decisions not applicable to every man's condition, and to every citizen's case?

Has he not suffered a loss, by the rule of allowance to others, for furnishing casks, boxes, and packages, used and kept by the Government, of \$25,908 61 and a further loss of casks and packages captured by the enemy and destroyed by the troops of the U. States of \$4,805 86.  
—(q.)

Has he ever received the 12 1-2 per cent on the gross amount, or the net amount of issue, to the troops in the descent of the St. Lawrence in 1813? and yet the third auditors remark shows most clearly that it is his right, but he pleads that the perquisite of this issue should be a bar

to the claim for the loss of packages and vessels belonging to the contractor in carrying the provision in the descent aforesaid : thus pleading the allowance under the stipulation of one article of the contract against the positive stipulation of a distinct article.—(F)

Has he ever received any damages, for the excess of one component part of the ration, over the others, of Porter's deposit, and captured flour, which is \$9,190 14-100.—(R)

Has he received the amount of transportation of provisions, intended for deposit, or in transit for that purpose, at Canandaigua and Genesee river, his agent being subsequently directed to remove immediately the said supplies as a substitute for those that had been captured and destroyed by the invasion of the Niagara frontier, and which supplies were *promptly* furnished by order of the Commanding General without availing himself of his legal right of 30 days notice on the sudden call, and for the immediate subsistence of the Militia enroled in the service ; although payment of the said transportation is provided for in the spirit and meaning of the third article of the contract, and the decision of the Secretary of War of 27th July 1816, amounting to \$13,136 24.—(S)

Has not the contractor suffered a loss of interest and damages by his drafts being protested, which from the time of unquestionable and acknowledged right to draw, to the time the precise balance was ascertained, would be together by the rule as paid to others—\$35,625 00.—(T.)

And did he not receive the official pledge of the Honorable Secretary of War that the balance should *immediately* be paid him on the settlement of his accounts ? And does not the contract likewise solemnly declare, that the United States shall *immediately* pay all balances ? Yet the payment was delayed with the loss of interest from March, 1815, to January, 1816, (amounting to \$10,000) and then paid in Treasury Notes, at 8 to 11 per cent below par, making a further loss of \$22,114 29-00.—(r.)

Have not decisions been made by the department granting in some cases in general, in others, in special terms, allowances for loss on treasury notes, protested bills, and deferred payment ; while, indemnification to the present claimant has constantly been evaded, notwithstanding his frequent remonstrances? (See Correspondence.) And is not the present claimant the greatest sufferer in a tax laid on one of the essential articles which he was bound to supply under the contract solemnly made by the public functionaries, before any official notice or law had been promulgated, taxing the said articles, which by the certificate of respectable distillers raised the price of the article 20 cents per gallon.—At 14 1-2 cents per gallon the minimum damages, based on the return of gallons distilled in 1814, and the duties that occurred in 1815, the most favorable data for the Government, absolutely impaired his contract to the amount of \$45,709 51-100. (v)

After these facts and the considerations that follow, how could the undersigned hesitate in making known his demands growing out of the positive conditions of his contracts, and recognised by the administration in favor of others, under circumstances deemed not more favorable than his own. Should the undersigned have hesitated, it would have been an acknowledgment of the weakness of his cause, or at least an admission that he had not the ability to establish his claims for exact and entire justice. He feels assured, however, by a consciousness of his own integrity that justice will be granted to him by his country, and he fully and confidently reposes for a redress of his wrongs and the eventual accomplishment of his legitimate rights in the representatives of a just and enlightened people, and in the mean time, does in the most solemn and formal manner protest against the acts of the third Auditor, believing as he does that he has not acted by authority of the Government or head of the war department.

But if his official conduct *has* been sanctioned by the Head of the Department, the undersigned does as freely and solemnly protest against the said acts—in denying him the just rights of a citizen, in refusing him copies of his own documents, so necessary in case of accident to the

War Office, and in refusing him copies of decisions made from time to time, which decisions may have given credits to other contractors in the settlement of their accounts. —He protests against the report of the third Auditor as a mass of errors, misrepresentations and false reasoning from facts neither established, nor possible to be established ; and as the undersigned's life is uncertain, he is bound by the most sacred obligation to his children, to demand that this protest be placed on the files of the War Department, and likewise another copy to be filed with the records of his accounts.

ELBERT ANDERSON.



## NOTES AND REFERENCES TO FACTS, &c.



(A.) The duty of the third Auditor is to examine accounts and facts of the service being performed, and if any dispute arises as to the construction of the law and contracts, the Secretary of War decides as well as on the equity of the claim. The Comptroller is the Law-Officer, and appeals are made to him from the decision of the Secretary on the law and contracts, and from him to Congress. That the third Auditor has assumed all the powers of *three distinct branches of Government*, is evident to any person who will read his extraordinary report on the contractor's claims.—*See remarks on 3, 7 and 8 claim, and his suggestions to second Comptroller.*)

(B.) In the settlement of contractor's accounts, the cases are numerous, in which boxes and packages have been paid for by the United States, and always for troops on the march, or on board of transports; the officer receiving the provision, merely gives an endorsement on the back of the abstract, for the number of casks or packages. The first issue the present claimant made, was to a detachment bound to N. Orleans, in 1809. The Secretary of War, William Eustis, ordered the casks to be paid for.

*(Sixth article of the contract.)*

(B.) That all losses sustained by depredation of an enemy, or by means of the troops of the U. States, in ar-

ticles intended to compose rations, &c. as well as in OTHER PROPERTY NECESSARILY USED IN TRANSPORTING THE SAME, shall be paid for at the contract price of the rations, &c. " and at an *appraised value of the other articles*, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstance of the loss and the amount of articles for which compensation is claimed."

(B.) On the books of the War Office the following decision is recorded :

*War Department, October 13, 1814.*

SIR,

Your letter of 3d inst. inclosing the contract, correspondence and accounts of James Byers, Esq. contractor, has been received.

The question submitted to this Department, appears to have been anticipated in Mr. Byers' proposal of January 27th, 1812, to furnish the deposits referred to, reserving to himself a claim on the Government for reasonable and equitable allowances beyond the price stipulated in his contract for all supplies furnished before that contract should take effect.

*It does not appear by the contract referred to, that Mr. Byers was bound to furnish casks and boxes,—or, in other words, it does appear that when the rations were issued the casks and boxes belonged to the contractor ; if, therefore, the casks, boxes, &c. have not been returned to him, and are charged at a fair price, the amount should be passed to his credit.*

I am, sir, very respectfully,

Your obedient servant,

(Signed)

JAS. MONROE.

Colonel T. LEAR,

Accountant War Department.

After the lapse of several months, and at the time the present claimant's casks account was presented, the fol-

lowing interpolation and codicil was added and interlined to the document on the files of the Accountant Department, the original record in the books of the war office remains unaltered, as above.

"The above allowance to Mr. Byers for casks and boxes, was intended to compensate him for his trouble and expense sustained in supplying rations, and making deposits before his contract commenced, and no allowance for casks or boxes must be made except in cases of special contract with this Department.

(Signed)

JAMES MONROE.

Col. T. Lear,  
Account. War Dept."

(c) It will not be denied that a requisition for a deposit must necessarily embrace the packages as much as an order for goods on the other side of the Atlantic, naturally implies that the importer shall put them in packages; yet the merchant on the other side charges the packages and the purchaser on this side in usage, and law is bound to pay the value. Hence the requisition for deposits of provision is authorised by the contract, but the packages are not authorised by the contract, and as the Government never claim the packages after they have been emptied of their contents in the current issue of contractors, so when they forcibly hold them and never return them to the contractor, they must clearly be paid for, and by Mr. Crawford's general decision of 27th of January, the U. States are bound to pay the value of the packages. (See the argument on file on this claim, and the opinions of Pinckney, Emmet, Kent and Spencer, marked Q.

(d) See correspondence with third auditor, letter to him 13th and 25th Sept. and his reply the 26th, in which he confirms the verbal statements alluded to in previous correspondence. The decision of all the courts in the U. States are recorded for the use and benefit of the people and the Constitution of the U. States, as well as the individual states, recognises the right of every citizen to demand access to these records as well as all other records that have a bearing on his rights and claims. The third

auditor has plead against the just claims of the contractor, that documents to check the demand may have been destroyed by the burning of the War office in 1814; and if claimants are deprived of official copies of their own documents *now* on file, what would be the consequence in case of a second accident to the original document as officially recorded. The amount of whiskey issued, is on file, and could be furnished in *one line*, yet this is denied.

(E) See third auditor's report on whiskey claim.—The Constitution of the U. States expressly guarrantees to the citizens that no law shall be "made impairing contracts." (See 1st article, 10th section of the Constitution.) It is expressly asserted by a British minister, and is his boast, that the Legislature (of Great Britain,) has never harbored the *intention* of enacting regulations which might invalidate a national compact, or affect the sacred tenor of engagements contracted between individuals." (See letter in American state papers, vol. 1, page 244.)

(F) The gross amount of perquisites on provisions in descent of the St. Lawrence was 10,273,40

The amount after deducting the provisions lost on the passage was 5,749,69

Neither of the above amounts appear in the Contractor's accounts. See third auditor's report on claim 3d, concluding remark and the contractor's refutation in his reply and statement.

(G) See his remarks on claim 7th, and also the contract dated 25th Feb. 1813, also the decision of Sec. Crawford, dated 27th Jan. 1816, directing the accountant to pay "all losses sustained upon the issue of rations not requirable by the contract." See also the contractor's letter of protest, dated Fort George, U. C. 18th July, 1813.

(H.) See the contractor's letters dated 13th and 25th September 1823, to the third Auditor and his reply dated 26th September, 1824 refusing to give the documents called for by the contractor.



(I.) "Extract from the report of the third Auditor on claim 8th.

\$181,243 57, reported 14 March 1815, paid 5 Jan. 1816.

56,756 43 " 2 June " " 28 Aug. 1815.

7,389 34 " 10 July " " 5 Jan. 1816.

that the first balance of \$181,243 57 and the third balance of \$7,389 34-100 it is found were paid in January 1816 in treasury notes, dated the 21st of that month, bearing interest until paid or funded, about which time treasury notes it is understood were from 3 to 4 per cent above par.

"The second balance of \$56,756 43-100 was remitted to Mr. Anderson in August 1815 in treasury notes, at which time treasury notes were also above par."

Extract from the certificate of Prime, Ward and Sands, and Nevins and Townsend, which is certified by a commissioner and dated New-York Nov. 10, 1823.

"We hereby certify that upon an examination of our books it appears that U. S. treasury notes in this market were on the first of September, 1815, at 89 per cent payable in specie, and on the 11th of Jan. 1816 at 91 43-100 per cent, payable in specie."

The difference between the value of the treasury notes received by the contractor and specie at the time they were received as certified above, was \$22,114 20-100

(K.) The exhibition of that certificate was made merely to show that the joint capital of the contractor and his associates were insufficient to enable them to fulfil the stipulations of the contract, without advances from or payments by the government, or loans from banks—and it is a principle of common law recognized by all our courts that the non-payment of a sum or balance due, is full proof of the loss of interest, which necessarily follows the original debt, until both principle and interest are finally paid. [See reply on claim 3th, and opinions T]—[See decision of Sec. Crawford of 27th Jan. 1816.]

(L.) The government in 1814 charged me with provisions said to have been left in deposit by A. Porter amounting to \$2593 78—and although it is admitted that these provisions were *mine*, and that of course the charge was wrong, the third Auditor refuses to allow the claim for

the amount, because the account he says is closed—and *because* also that he *erroneously* gave A. Porter credit for the amount, which error the claimant pointed out at the time it was made, and now furnishes full and ample testimony on the subject. [See *third Auditor's objection to claims* 2, 3, 4, 5 and 6.]

(M.) Extract from the contract made with Gen. Dearborn for the issue of the provisions which had been deposited by the contractor during the year ending the 31st of May 1813.—Article first,

“That an inventory shall be taken as soon as possible which shall comprise all such supplies as shall have been actually delivered *on or before* the last day of May 1813, and shall on that day remain unexpended.”

The operation of this contract is altogether retrospective, and the price in money was 14 cents per ration, and the price of the component part of flour 4 cents.

Under the contract dated 25th Feb. 1813, which went into operation on the 1st of June 1813, the money price of the ration was 17 1-2, and the compound part of flour 7 1-2 cents—this contract for deposits as well as issue from deposits, is *prospective*, and embraces what shall be issued and deposited, between the first of June 1813 and 31st of May 1814 at the money price 17 1-2 cents. [See *contract*.]

These simple facts prove conclusively that the settlement of March 1815 was strictly according to law and the facts. And yet the third Auditor erroneously states “the provisions were deposited under the first contract to be issued under the second; and that the latter contract fixes the price at 7 1-2 cents instead of 4 cents;” had he said that this ought to have been the condition it would have been modest, but that would not answer his purpose, and in his eagerness to discover errors in the settlement with his predecessor in March 1815, he sets out by making two bold assertions, neither of which are true. Now I will help him a little, and show him that it never was *intended* by the War Department—the order of the Department to General Dearborn, dated 16th March, 1813, after contract of 25th Feb. 1813, directs him to

carry into execution the contract with the claimant to issue the rations of the former deposit; the first article of which contract, is recited above in the contract with Gen. Dearborn. (See contractor's reply on file,) and farther arguments and facts, dated 6th October, 1823.

#### OPINIONS.

Mr. Anderson has submitted the report of the third auditor to the second comptroller, and his replies thereto, for my consideration; I do not understand that my opinion is asked relative to the accuracy of the *principles* on which Mr. Anderson's accounts were settled in March 1815, but that it is asked as to the propriety of a re-investigation of these principles, and of again opening that account. Should I have misconstrued the request made to me, no possible injury or inconvenience can arise to Mr. Anderson, because I think he has met and most successfully refuted the new principles on which the items of the former account have been questioned. Indeed it would not be in my power to present his arguments in a light more perspicuous or forcible, than he has himself exhibited them.

The contracts made between the Government and an individual can be construed and interpreted by no other rules or principles than those which govern contracts between private individuals; the same rules also which bind and conclude individuals in a settlement of accounts, must conclude the Government, now the third auditor insists that the rations of flour and hard bread, mentioned in his report, should have been charged at 7 1-2 cents, whereas they were charged only at 4 cents. This depends entirely upon the question, whether the flour in question was received under the contract of 7 Nov. 1811, and is to be governed by its provisions or by those in the contract of 25th February 1813. This was not a question of fact; or if it was, it is not pretended that any mistake of the facts produced the settlement that has been already made. No new fact has been discovered, nor has any, then supposed to be true, been ascertained.

to be unfounded. The question then involves only the legal construction of these contracts. The Government by its constituted agents, acting within the scope of their authority, agreed in the meaning and interpretation of these contracts, and solemnly decided so far as it could decide by the final settlement and payment of that account, that Mr. Anderson received the flour in question under the contract of 7th November 1811, at four cents per ration.

It is a well understood principle of the common law, and it is believed to be acknowledged by the highest tribunals of justice in the United States, and in the several states of the Union, that when an account is once settled and the balance is paid, both parties are precluded and *stopped* from insisting afterwards, that the settlement proceeded on a mistake of the law or on a misapprehension of the legal effect of their contract upon which the settlement took place.

A contrary principle would be most alarming in all cases, but in contracts with the Government it would be peculiarly unjust and oppressive; no man who had contracted with the Government, after having settled with it through its authorised agents, (the only way in which he could settle) upon principles acceded to by both parties, could ever assure himself of a final termination of his contract. If the Government could not be bound by such a settlement, in which no error of fact had taken place, then in as much as the statute of limitations could not be pleaded against the Government, such accounts might be overhauled at a period however remote. A doctrine pregnant with such consequences cannot be sound, neither would there be any reciprocity between the parties for the individual contracting with Government, would be clearly bound by such settlement, most certainly the Government ought to be equally bound.

October 2, 1823.

(Signed)

A. SPENCER.



“ Mr. Anderson has submitted to me for my opinion, the report of Mr. Hagner, the third auditor, to Mr. Cutts, the second comptroller, in favor of opening the settlement of accounts made between the proper department of the Government and him, in March 1815, together with a copy of his replies to that report, and together with the contract of 7th Nov. 1811, and the filling up the blanks of that contract by Gen. Dearborn, and the contract of the Secretary of War of 25th of February 1813, and the contract of issue of the same date.

I have examined the same, and I concur entirely in the opinion of the Hon. Mr. Spencer, hereto annexed ; in a case where there is no fraud nor mistake in point of fact, it would appear to me to be most dangerous as a precedent, and accordingly injurious and oppressive to the rights of individuals for the Government to open a settlement after a lapse of years, on a suggestion of an error in the legal construction of the contract. Individuals are not permitted, (and the objection is infinitely stronger in respect to the Government) to open a settled account on the ground of a mistake of law, when the settlement was made with full knowledge of all the facts. I do not understand or apprehend, from the papers which have been submitted, that the settlement was made in 1815, upon any misconstruction of the contracts, or of the rights of Mr. Anderson ; but be that as it may, the principles of sound policy as well as the established rules of law and of equity, forbid the opening of accounts fairly closed, upon the suggestion of any mistaken construction of law, or misapplication of principles. They can only be opened for fraud or mistake in matter of fact.

JAMES KENT.

*New-York, October 30th, 1823.*

D

"I have perused the papers submitted to me, by Mr. Anderson, respecting a suggestion from the third auditor of the treasury, to the second comptroller, that the settlement made by the Government with Mr. Anderson, in March 1815, (the balance of which was then paid) should be opened on alledged mistakes.

It is scarcely my province to consider whether the allegation of mistakes be or be not well founded, but I confess the examination I have been able to give the contracts, leads me to doubt their existence. The third auditor contends that flour deposited under the contract of the 7th Nov. 1811, but issued under the contract, or rather after the commencement of the contract of 25th of Feb. 1813, should be charged to him at 7 cents instead of 4 cents per ration, as it was deposited under the contract of 7th Nov. 1811, Mr. Anderson was only allowed for it 4 cents per ration and by the contract with Gen. Dearborn, he only stipulates *to account for it* after deducting 12 1-2 per cent for wastage, that accounting must be at the contract price for it, when deposited. Suppose Mr. Anderson had never made a second contract with Government, but had closed his connection with it on the last of May, 1813, and had then delivered up to its agents this very flour, he certainly could not have demanded for it deduction of more than 4 cents per ration; nor if it had been wasted or lost, could he have been charged more. Why then should he on keeping it be charged more without a special agreement? The contract of 25th Feb. 1813, makes no provision for the charge insisted on by the 3d auditor, it only agrees upon the price Mr. Anderson shall be allowed for the flour *he* furnishes. If Government had demanded 7 cents for it on the commencement of the second contract, he might have said "that will yield me no profit—take it and do with it what you like; I will purchase my own flour when I find it most for my advantage." As to the hard bread, the stores left by A. Porter, and the captured flour I can find no provision relating to them in either contract, and must presume they were settled for, on such terms, as at the time seemed reasonable to all parties. But even if I be

wrong in this reasoning, and that the former settlement was erroneous, the error was in the construction of the contracts, which is a mere error in law. The payment to Mr. Anderson, in March 1815, was voluntary, and with a full knowledge of all the facts and circumstances of the case. As a lawyer, then I cannot hesitate in saying that a similar settlement between two individuals could not be opened, even if the statute of limitations interposed no objection. There is no fraud or mistake of fact, and neither a court of law nor of equity would entertain an application for that purpose. I do not believe Government either claims or enjoys the privilege of disregarding these principles of law and equity, which, under similar circumstances, individuals must abide by; and although the statute of limitations may not interpose a legal bar against it, yet the great length of time that has elapsed, ought to operate on its discretion with a force equal to the obligations of a law.

THOS. ADDIS EMMETT

*New-York, Nov. 1, 1823.*

(N.) There can be no doubt that the settlement of 1815 was correct, legal and founded on principles of the contract, and every person will perceive at once the equity of the case was against the contractor by his being charged with the provision in *mass* at original places of deposit instead of distant and subsequent places of issue. Messrs. Spencer, Kent and Emmett in giving their opinion, were not required to confirm what was clear and plain, but they were required to say as jurors, whether the government had any power or right to call in discussion anew, the principles of the former settlement on the ground of *mistakes of law or contract*. The peace of society, the principles of the common law, and the rights of every citizen are involved in this question, those gentlemen after a careful reading and examination of the contracts &c. voluntarily gave their opinions as to the correctness of the settlement of 1815, and it is hoped the question whether the government can dispute the principles of former settlements is at rest forever.

## CORRESPONDENCE AND ORDERS.

*War Department, Feb. 25th, 1812.*

E. ANDERSON JR.—SIR,

Your letter of the 18th inst. is received. In addition to the ordinary issues under your contract, you are required to provide rations sufficient for twenty-five thousand men, for two months ; calculating the issues of meat, to consist wholly of salted beef and pork, or nearly in those proportions. The object being to secure the flour and salted meats ; the procuring of the other parts of the rations may be delayed for the present. Albany, Troy and Lansingburg, may be considered as the principal places of deposit, but where your purchases are made at considerable distance from them, the removal may be delayed until farther advised. This may particularly apply to purchases made in the Western parts of the state of New-York.

You will inform this Department of your progress, and draw your bills as you make your purchases giving regular advice.

Respectfully

Your ob'd't serv't.

W. EUSTIS.

ELBERT ANDERSON, JUN.

*Department of War, August 6, 1812.*

SIR,

Your letters of July 30, and 31 have been received. The deposits of provisions by Anderson and Byers should be inspected where they are, in order to save the transportation of such as may be condemned, after which you will order them to those places where they may be wanted.



If the transportation can be made by the Quarter-master-general, or in any other way to greater advantage, you are not under obligation to employ the contractors, but they are bound to make the transportation and issue if required, at the public expense. In making disposition of your troops, you will have regard to your authority to require Militia of the Governor of New-York—a duplicate copy of his order is herewith enclosed.

I have &c.

W. EUSTIS.

Gen. H. Dearborn,

*Head Quarters, Greenbush, Sept. 28th, 1812.*

Mr. Anderson,

Contractor for the Army,

SIR—It will be proper for you to have on hand next spring, on Lake Champlain, as supplies under your present contract, flour, salted pork and beef, sufficient for rations for ten thousand men, for three months; and you should take measures accordingly in season.

Yours with esteem,

H. DEARBORN.

*Department of War, Nov. 27th, 1812.*

Sir—

In my letter of Oct. 29th, you were advised that arrangements would be made with the contractors for issuing the deposits of provisions, which had been required of them. Messrs. Anderson and Byers have expressed a willingness to make the issues; and in case you should find it for the public interest, to employ them in preference to other agents—you are authorised to fill the blank attached to their contracts accordingly.

I have the honor, &c.

W. EUSTIS.

Maj. Gen. Henry Dearborn, Plattsburg.



*Head-Quarters, Albany, December 19, 1812.*

Mr. Anderson,

Contractor for the Army,

SIR—You will please to remove all the flour provided for the Army, on the banks of the St. Lawrence, near Ogdensburgh, to Russeltown, excepting such as may be necessary for the current issues.

Your humble servant,

H. DEARBORN.

*Albany, December. 19, 1812.*

SIR,

You will please to have on hand in the vicinity of Sackett's Harbor, and to see deposited at those places by the first of April, three months rations for one thousand men.

H. DEARBORN.

Mr. Anderson, Contractor.

*Head Quarters, Dec. 26, 1812.*

Mr. Anderson,

Contractor for the Army—or his Agent,

SIR—Of the deposit, which you have been requested by the Secretary of War, to have on Lake Champlain, for three month's rations for ten thousand men, you may place one thousand eight hundred barrels of flour, in suitable proportions, at one or more of the following places, on boatable water leading to Oswego—viz: Rome, Onondagua and Cayuga.

Your humble servant,

H. DEARBORN.

*War Department, Feb. 3, 1813.*

Sir—

A force from four to six thousand men may be concentrated on some point of the St. Lawrence or Lake Ontario, and will make necessary supplies of provisions equal to the subsistence of this number of men for three

months, counting from the first of March next. The places of deposit should be Sacket's Harbor and Oswego. The supplies you have at or near Ogdensburg need not enter into your calculation, as they may be required for other purposes.

I am sir, very respectfully

Your obedient servant,

Elbert Anderson, Esq.

JOHN ARMSTRONG.

*New-York, Feb. 13, 1813.*

SIR,—

I last evening returned from Jersey and found your letters of the 8th instant. I immediately instructed my agents at Sackett's Harbor, Oswego and Rome, to use every exertion to obtain the supply required for 6000 men. For this purpose I have transmitted funds to their credit in the State Bank. Shall have reason to draw on your department for that requisition as well as the current issues as last advised. Your request that I should repair to the seat of Government shall be complied with as promptly as the nature of my business will admit.

I have the honor to remain your ob't serv't

E. ANDERSON, Jr.

Hon. John Armstrong.

*War Department, March 16, 1813.*

SIR,—The Quarter-master-general is informed that you will give the necessary instructions for the issue and safe-keeping of the provision which may be furnished in deposit for the Army by the contractor as the warm season is approaching, these deposits will require particular attention, and it is presumed you will immediately make the arrangements for issuing agreeably to the instructions of this department of 27th Nov. 1812.

I have the honor to be

Very respectfully, Sir,

Your ob't serv't

JOHN ARMSTRONG.

Maj. Gen. Henry Dearborn,  
Sackett's Harbor.

*Head Quarters, Albany, April 4, 1813.*

Elbert Anderson, Esq.

Contractor for the State of N. York,

Sir—You will not fail of having at Sackett's Harbor, by the 20th day of the present month, one thousand barrels of pork and beef, twelve hundred barrels of flour, fifty thousand pounds of hard bread, six thousand gallons of spirits, with a due proportion of soap, vinegar and candles. And you will also have ready at Oswego by the 15th day of May, to be forwarded on the shortest notice, 200,000 complete rations; and in the mean time be prepared for current issues of rations for 4000 men at Sackett's Harbor, and 2000 at Utica, Rome and Oswego, as the troops may be in greater or smaller proportion at the three last mentioned places respectively, and with suitable depots of rations at Green-Bush, Schenectady, Little-falls, Utica and Rome for supplying troops, on their march from Green-Bush to Lake Ontario.

The supplies demanded by this order to be deposited at Sackett's Harbor and Oswego, will be taken from the deposits belonging to the U. States, while the current issues will be furnished by the Contractor on the general stipulation of his contract. You will superintend and direct the issues of those rations which will be furnished from the public deposits as well as those issued under your present contract, you will have correct accounts kept of what you receive and issue from the public deposits, *and you are hereby authorised to receive such parts of rations from the store-keepers, with whom they have been deposited on account of the U. States, as circumstances may require.*

II. DEARBORN.

*Albany, April 14, 1813.*

SIR,

You will please to take suitable measures for having the whole of the provisions destined for the Army, on the borders of Lake Ontario, in readiness for being conveyed by water to Sackett's Harbor, or to any other part

of said Lake, at the shortest notice ; and to have suitable persons to take charge of the provisions at Oswego, and other places where necessary. All necessary expenses incurred on account of the provisions, that have been deposited by you for the U. States, will be allowed by the United States.

Your humble servant,

H. DEARBORN.

Elbert Anderson, Jr. Esq. Contractor.

[*Endorsed on the last order.*]

Col. Jenkins will be pleased to pay the Contractor, Mr. Anderson, for the transportation of the within provisions from the points of original deposit, to the posts of issue upon the production of the proper vouchers for the same.

*Sackett's Harbor, July 20, 1813.*

ROBERT SWARTWOUT.

*New-York, April 8, 1813.*

SIR,

I have transmitted to the Accountant of the War Department the following letter, with the accompanying vouchers ; that Department seems to be very dilatory in the examination of accounts which is of great importance to me. I shall leave this on Saturday for Albany. E. Jenkins, Esq. has furnished me with an order issued by General Dearborn, for an additional supply for the army to the West. It requires my personal attention, and I must again solicit your attention to transmitting me the usual advance on the new contract. The advance on the new contracts have always been made much sooner than this period in all former cases. As my accounts are now furnished for February, I shall draw on your department for the current issues of March, estimating that issue at

\$38,000 ; it will exceed that amount, as the troops increase daily in this state.

I have the honor to remain,

Your obedient servant,

ELBERT ANDERSON, Jun.

Honorable JOHN ARMSTRONG.

*Albany, April 14, 1813.*

Sir—

*I shall depend on you for not only the transportation of the provisions for the Army on Lake Ontario, but also for the issuing the same, excepting at Niagara, previous to the 1st day of June next—and I trust you will have suitable characters employed for the purpose.*

Your's &c.

H. DEARBORN.

Elbert Anderson, Jr. Esq.

(EXTRACTS.)

*Utica, 21st April, 1813.*

SIR,—

As soon as the provision can be forwarded from Oswego to Sackett's Harbor, I feel confident the supplies will be ample. Those requisitions for the first expenditures will be the most difficult, as the sub-contractor has, in consequence of the great and unexpected increase of troops, been released from furnishing any portion of the deposit. We have at this place and Rome, an average of 2,000 men, and the contractor is making daily sacrifices to meet the current issue. The current issue for the harbour exceeds 4,000 men, and daily increasing. On the removal of the troops from Plattsburg, I directed my agent to cause a drove of cattle, provided for that post, and that had been stall-fed by me, to be drove to Sackett's Harbor. I fear they have been swamped in the Chateaugay woods, as I have not heard of their arrival. I have



this day sent a man in Chenango county to obtain 50 head for the Harbour. Beef now at the Harbour, \$8 per 100 lbs. I have made a contract with a powerful company of Butchers and Drovers to supply all rations of fresh beef on the frontiers and the Canadas after 1st of June. The arrangement is distinct, and I believe, well organized for the beef department. Until the 1st of June great and heavy losses are daily accruing to myself and agents, in consequence of the alarming scarcity of provision.

General Dearborn has invested me with Quarter-Master's powers to transport the public provision from Cayuga and Rome to Oswego, &c. and my vouchers for those disbursements will be simple, and comprise the expense, by the voucher of the receiving and delivering store-keeper for the several amounts paid by them. I am ready to give my services to effect the objects of the Secretary of war and Government; but it must be expected, that the Accountant of the War Department shall promptly examine and place to my credit my vouchers as soon as received. If we soon move into Canada, it will be necessary to have *the line of store-keepers organized*: will you, or the commanding General direct this to be done? General D. has given me some instructions on this head, but not sufficiently clear on one side, nor extended to meet the emergencies that may arise.

Shall I close this letter by the usual cant of the Contractors, viz. of losses, &c. &c.? No; it is sufficient for you to know, that the campaign was fixed after you came into office—that the supplies had to be obtained for a large force, in a *movement of troops more rapid* than any thing that has occurred since the war, and that the country was previously drained of all its usual resources. The subsistence of the *horses* at this place costs three times the subsistence of the *soldier*:—corn 10s. 6d.—oats 8s. per bushel. All I shall do at present shall be to pray for the 1st of June; I shall feel so much satisfaction on the arrival of that day, that I shall treat all the army. Tomorrow I move to Cayuga to push the supplies from that quarter. Quarter-master General Swartwout passed



through to-day. No news from the harbor ; last accounts 18th ; Flotilla yet in the ice.

With sentiments of respect,  
Your ob'd't serv't.

ELBERT ANDERSON, JUN.

P. S.—Mr. Jenkins will forward to superintendant of public supplies, Blank forms drawn up by me at Albany, marked A. for delivery in deposit, and Blank form B. for the delivery again to the contractor, for issue. I hope they will be approved.

Hon. JOHN ARMSTRONG, }  
Secretary of War.

*Geneva, April 26, 1813.*

Sir

I have no instruction what stock of provision to supply for Gen. Lewis' Army. Is it expected he will be at York U. C. by 1st of June ? If so, he must be supplied from a new deposit not yet required. We have employed all the boats we could find to transport the provision from Cayuga to Oswego ; 700 barrels of meat have gone down, and about 1500 barrels flour. I hope in God's name the public boats will carry them to the Harbor. All the private boats have been purchased by Government on the Onondaga and small waters, and we now have to pay a great price to transport the deposit, meat, flour and bread to Oswego. My greatest apprehensions are that the great force at the Harbor will eat us up, before the provision can arrive by water from Oswego. I hope my fears will be groundless.

My principle stores will be laid up on the Cayuga, mouth Genesee river, Sodus Bay and Oswego, those will constitute the principal depot for provisions. Will you say what stock is required in deposit to be conveyed over in case we cross ? Let me have authority to call for the public boats, or we shall never be able to get it

down to Oswego. It takes several days to go and return from Cayuga to Oswego.

I remain, in haste, &c.

Your obedient servant,

E. ANDERSON, JR.

*Cayuga, April 28, 1813.*

Sir—

Since my last, Mr. Townsend has returned from the Harbor. Gen. Dearborn and about 1500 men had left there on Friday, they stood off on Saturday morning as I suppose for York. I am highly gratified that every thing relating to the supplies, required for the 15 days of this expedition, was promptly furnished by my agent, I. Foster, and that he assures me he has sufficient until the supplies reach him from Oswego, &c. I this day send down 250 barrels hard bread. We have four large ovens going at this place, and bake 60 barrels hard bread a day, and we daily send the pork, beef and whiskey, but we have very few boats. I see more and more the necessity to have some power by the General or Secretary of War, and that my calls for boats must and ought to be complied with. I am now acting in the capacity of *Quarter-Master, Contractor and Commissary*. I go to Oswego to-day, and to the Harbor on Friday. We anxiously look for good news from the Lake operation; if it comes to-day it will have a good effect on the election.

I remain with great respect,

Your obedient servant,

ELBERT ANDERSON, JR.

Hon. John Armstrong, Sect'y of War.

*Sackett's Harbor, May 1, 1813.*

Sir—

Your's of this day's date received, in reply will observe that you are permitted to make use of five of the Batteaux, belonging to the Government, now at Oswego, for the purpose of transporting provisions from Oswego

to this place ; or from and to such other place or places as may become necessary until otherwise directed ; but previous to any boats being sent to any place more distant from this post than Oswego, the Commanding Officer at this post will be notified or consulted as to the time when the boats shall go further from thence than Oswego. You will please to furnish such men as may be employed on account of Government, with rations while so employed.

You will furnish the necessary store room for the provision, or direct yours to do so, and if the Commanding Officer at this post shall not furnish a store-keeper, you will appoint a proper person, and name him to the Commanding Officer, for his approbation. With respect to issues at this post, while I have the command, consolidated returns signed by the Commanding Officers of Regiments, and approved by myself or by Capt. Charles E. Toby, my aid will be recognized.

I am, sir, respectfully

Your humble servant,

JOHN CHANDLER.

*Brig. General.*

Elbert Anderson, Esq.

*New-York, May 12, 1813.*

Sir—

When I last had the pleasure of a personal interview with Maj. Gen. Dearborn, among other instructions, I received the enclosed orders of April 14th—I immediately took measures for their execution, and by Gen. Dearborn's request, I wrote to Maj. Gen. Lewis, to request him to give the earliest information of the number of rations required on the Niagara frontier, on the 1st of June ; and to inform me of what amount of supplies would be left on that day by Mr. Porter.

In absence of Gen. Dearborn, I had the honor to address a note to Gen. Chandler, commanding at Sackett's Harbor ; his reply which is annexed, embraced all the objects of my inquiry.

The Army, in its present state of organization, has never been directed to consolidate their provision returns, but every Officer commanding *detachments and companies* has thought himself at liberty to draw rations on his own authority, when it is well settled that the contractor is not bound to obey the requisition, but of the Commanding Officer *only*. It is undoubtedly the duty of Quarter Masters of Regiments to cause all the Company returns to be consolidated, to be signed by the Commanding Officer of the Regiment, and countersigned by the Commanding Officer of the post, who will give a voucher for those returns in a "monthly abstract." We are collecting the Army at one point, and we are about entering the enemy's country ;—subaltern Officers may be taken prisoners or be killed, before an abstract can be had. In fact, it would be impossible to issue on those multiplied returns, some without order or date. And it becomes indispensable that an order should proceed from the War Office to the Inspector General or the Commander in Chief on this subject, that will be permanent and apply to the cases that daily occur.

What supplies are required at Buffaloe and Niagara? If *Porter leaves any provisions on hand on the 1st of June, is an inventory to be taken, and are they to be issued by the new Contractor?* The first of June will soon be at our heels, and this requires attention.

With sentiments, &c. &c.

ELBERT ANDERSON, Jr.

Hon. John Armstrong,  
Secretary of War.

SIR,

By a letter from General Lewis, of the 28th inst. I learn, that all the flour purchased by order of General Smith last fall on the Niagara, is yet there and untouched. You may avail yourself of this and do it promptly. I know not how much Mr. Porter may have on hand now, and as little do I know what he may be able to

leave in store when his contract will end. If things go as I hope and have reason to believe they will, large demands upon you will soon be made at and about Sackett's Harbor. The 4th Regiment is on its march from Massachusetts, about 640 strong, and Major Dix will set out from Baltimore with a battalion of the 14th in a few days. Another battalion, under Major Case, will leave Philadelphia in a week or ten days, and a third under Lieutenant-Colonel Preston, is, perhaps, now at Sunbury, (Pennsylvania.) When all the threads are assembled the ball will be a large one.

The Campaign has opened auspiciously.

Your's, respectfully,

J. ARMSTRONG.

12th May, 1813, *War Department.*

ELBERT ANDERSON, Esq.—N. York.

*New-York, May 14, 1813.*

SIR,

I this day enclose Mr. Simmons my account for current issues for the month of March, amounting to—\$61.774,59 6.

In my letter of the 8th of April, I had the honor to estimate the issue of this month at only \$38,000 dollars, and drew accordingly, indicating the issues of April and May on the same ratio. I shall be justified in drawing for one hundred and twenty thousand dollars, but I shall for the present draw for the month of April only.

I have many mouths to feed, and the abstract for deposit you required, as well as the remainder on Lake Champlain, will soon be completed. All I ask, is a prompt settlement of my accounts, by the Accountant's department. Surely Mr. Simmons does not wish to be reminded that, "no officer of the United States shall impede the settlement of the Contractor's accounts."

I am, sir, &c. &c.

ELBERT ANDERSON, JUN.

Hon. John Armstrong, Secretary of War.  
Washington, D. C.



*New-York, May 13, 1813.*

EXTRACT.

Sir—

Your favor of the 12th is received. I feel great pleasure in congratulating you on the favorable commencement of the campaign. The war will soon terminate on Lake Ontario. Since my letter to you of the 14th inst. I have received a communication from Maj. Gen. Lewis.

With respect, &c.

ELBERT ANDERSON.

Hon. John Armstrong

*New-York, June 5, 1813.*

Sir—I have issued rations to Indians at French Mills, about 300 to 400 per day. It is impossible to procure supplies in Franklin County, and Gen. Dearborn expressed a wish they should come to Plattsburg and receive rations from the public stores.

Would not the public interest be promoted by ordering the Indian agent, Gen. Moore, to cause the Indians to draw their rations from the public stores on Lake Champlain, or, shall I continue to make current issues of rations to those Indians on the signature of the Officer commanding at French Mills.

I am sir, &c.

ELBERT ANDERSON, JR.

Hon. John Armstrong.

NOTE.—These issues were continued at a sacrifice to the contractor, although not “authorised by the contract.”

*Head Quarters, Niagara, June 26th, 1813.*

To the Contractor or Agents,

SIR—You will without delay, take effectual measures for having a supply of Pork and other articles now

on hand necessary to complete the rations transported from the nearest deposit to this place by land.

## H. DEARBORN.

Colonel Elisha Jenkins, }  
Q. M. G. 9th Military District. }

Sir,—You will be pleased to pay Mr. Anderson, the contractor, for the transportation of the provisions directed by the within order, on the production of the proper vouchers for the same.

ROB'T SWARTWOUT.

*Upper Canada, Fort George, July 15, 1813.*

Maj. Gen. H. Dearborn,  
Or Officer commanding  
Niagara Frontier,

Sir—On the 3d inst. whilst at Albany, I had the honor to receive a copy of your order of the 26th ult. transmitted to me by my agent Mr. Thorne ; although it was not legal to call on the present contractor to fill the *deficiency of parts* of rations left in deposit by Mr. Porter, when his contract particularly specifies, that deposits are to be made at fortified places and military posts for an Army, there to be stationed for three months in due proportion of all articles composing the ration. Yet under the impression that the Government will make *suitable and equivalent arrangements for those sacrifices* that are and must be made, I have lost no time in the prompt execution of that order.

My agent, Mr. Thorne, left Fort George on the 27th ult. and on the 3d of July, every team that could be procured was put in requisition to convey the provision to Fort George from Geneva, Sodus and Cayuga, a distance of 100 miles, over almost an impassable road. I likewise

ordered three boats to load at Oswego and proceed to Niagara with whiskey, pork, soap and vinegar.\*

I stand ready to obey any requisition that you may make. I shall only ask in case the deposit is required at Niagara, the protection necessary for the property that I shall be compelled to send from the mouth of Genessee River, Gerundegut, Poultneyville, Sodus and Oswego; and I am compelled to call on you for the aid of the public boats and teams for the transportation what *has been* placed in deposits, as it appears difficult to procure the necessary conveyance by private contracts for that purpose.

I likewise understand that an order has been issued for the purchase of 200,000 rations within my district of supply.\* I must beg leave respectfully to remonstrate and protest against this procedure, as tending to injure and jeopardize my present and future arrangements for the due execution of my contract; as not being warranted by any failure of special terms of that contract, and as tending to destroy that confidence so necessary to my credit, and finally to enhance the value of all the articles composing the rations, by placing the purchasers in the power of *exorbitant and avaricious holders, creating competition* so unequal, by giving one party unlimited power to purchase at any price, whilst the other is necessarily restricted by his contract; and lastly, by adding to the difficulties of the transportation and execution of your order of the 26th ult.

I pray you will weigh those reasons, and on reconsideration of this subject, recall your orders which will increase the public expenditures, and produce an artificial scarcity of the articles most wanted.

I have, &c.

ELBERT ANDERSON.

\* These were to fill the deficiency of Porter's deposit, and this is the letter of notice and protest referred to, and yet the third auditor says the contractor did not object.— The order was recalled.

*Fort George, July 16, 1813.*

Gen. Boyd,

Commanding Niagara Frontier,

Sir—I yesterday understood that Gen. Dearborn had resigned the command of the Army on this frontier to you—I have therefore the honor to enclose an official communication on the subject of supplies, required for your army. An early answer as to the number of the rations required to be deposited for this post, will be thankfully received. As the pork ordered over land must necessarily be a long time in its transportation, I would suggest a requisition on the principal butcher, through me, for beeves on the foot equal to twenty or thirty days in advance.

I have, &c.

ELBERT ANDERSON, Jr.

Albany, Sept. 3, 1813.

SIR,

I have the honor to draw on you under date of September 1, 1813, for one hundred and eight thousand dollars, in favor of Isaiah Townsend, Esq. This draft is predicated on the actual issue of June and July, and the presumed issue of August—the table enclosed will show the data. I should have sent on the abstract as herein stated for June and July, but expect they would be more acceptable to the Accountant of the War Department to embrace the whole quarter. By the issue of the preceding quarter, it will be seen what will be required for the quarter commencing 1st September, independent of any deposit that is, or may be ordered—being for the regular force, \$256,601 17, which sum I shall draw for at some future period. In addition to that fund, I am ordered to supply 1,500 *Militia* at Niagara, and 2,000 at *Sackett's Harbor*, which are ordered out for 90 days service, which will require a fund of \$55,125 0. I have drawn for fifty thousand dollars to meet that expenditure, in favor of J. W. Yates, Esq. Cashier, at sight, dated 3d inst. which will be

charged on account of issues required for Militia, for the quarter commencing 1st September. This force is independent of 1500 Militia ordered to Plattsburg, and General Hampton's regular army, ordered to the same place.

I have, &c.

E. ANDERSON, JUN.

Hon. John Armstrong, Sec'y War.

Sir—Gen. Harrison has been directed (as an ulterior movement) to descend Lake Erie to the Niagara River. His whole force, including that now there, will amount to six thousand men.

I am, sir, your obedient servant,

J. ARMSTRONG.

Mr. Thorne—Contractor.

*Sackett's Harbor, Sept. 30, 1813.*

*Albany, Nov. 15th, 1813.*

SIR,

The stock of salt meat in deposit on Lake Champlain exceeds the flour and liquor by nearly one half. By the official returns of provision on that Lake, dated July 6th, the liquor and flour, comprising *all* the bread stuffs will be consumed by regular issue by 15th January, 1814. It becomes necessary to look for other resources in time to meet the demands of the army. The transportation from Lake Champlain by water to Montreal requires three shipments, first to St. John's, then 18 miles by land to La Prairie, then again 9 miles to Montreal; whereas, by Lake Ontario, it can be conveyed direct to Montreal with less risk and cheaper conveyance in good seasons of the year. I would therefore suggest that the Hon. Secretary of War authorize the public store-keepers to receipt to the Contractor suitable deposits at Fall-town, Genesee River, Sodus, Oswego Falls and Village, and at Sackett's Harbor; all those places are safe, and Oswego is the best situated for store-room; and transportation is effected down the river to equal advantage as from the Harbour.



The rations to be laid up for deposit should be in such proportion as to meet the excess of meat, &c. on Lake Champlain, which ought to be as two of flour and liquor to one of meat. A small supply of flour could be had on the shores of Lake Champlain, but not in time to be removed before next Spring—all of which is respectfully submitted by

Your ob't servant,

E. ANDERSON.

Hon. John Armstrong, Sec'y War.

P. S.—The consumption of the deposit is estimated from 15th of this month at Montreal at the ratio of 12,000 men.

[NOTE—This letter was written when Hampton had the Commissariat in his own hands, and Gen. Wilkinson was descending the St. Lawrence, and had to call on him immediately on his arrival at the French Mills for breadstuffs.]

Sir—

The supplies for the use of the posts on Lake Ontario, will be deposited at the *Mouth of Genessee*. Salina, *Falltown*, on the Oswego, and for the Troops further to the east at Vergennes, or other secure points towards or at the head of Lake Champlain. The quantities at these points shall be indicated as early as possible.

Your's respectfully,

JOHN ARMSTRONG.

Elbert Anderson, Esq.

*Nov. 16, 1813, War Department.*

*War Department, Dec. 2d, 1813.*

Sir

You will make deposits of provisions at the following places ;—Whitehall, Vergennes and Plattsburg, on Lake Champlain—and at Sackett's Harbor, Falls of

Oswego, Oswego Village, and the Forts George and Niagara, on or near Lake Ontario.

On Lake Ontario the troops to be supplied will amount to six or eight thousand men; on Lake Champlain and its advanced posts, to twelve thousand. Orders have been given to collect at Plattsburg all the provisions now in deposit at other points on Lake Champlain; from these you will issue agreeably to the order of Gen. Dearborn of the 4th of April, 1813.

Peter Sailly, Esq. of Plattsburg, will be invited to take charge of the stores at that place, &c. and to appoint subordinate agents for the same purpose at such other places on or near Lake Champlain, Chateauga or French Mills, as the service may require; these, and all other store-keepers will furnish vouchers for deposits already made. The Quarter-Master-General will have orders to facilitate transportation; and in cases in which you transport, to leave the means employed by you undisturbed.

I am, sir, respectfully, &c.

JOHN ARMSTRONG.

*Elbert Anderson, Esq. New-York.*

*Head Quarters, Malone, Dec. 20, 1813.  
(Extract.)*

SIR,

I can barely call your attention to the following state of facts:—1st. the merchantable flour of the ancient deposit at Plattsburg is exhausted, and the very small quantity which remains on hand, is reported to be so much damaged, as to be destructive to the health of the troops. 2d. At this place the troops have had no bread for several days, and of the damaged flour remaining on hand at Plattsburg and the French Mills, it is believed there is not ten days' subsistence. 3d. A quantity of old biscuit, baked long since, is reported to be at Plattsburg, the quality of which is unascertained. Here then, sir, you have the whole stock of flour and bread on hand for ten thousand men, forming a Cordon from the St. Lawrence

to Lake Champlain, which without a speedy supply, they may be compelled to abandon, or the most fatal consequences must necessarily arise.

You inform me that your prospects on the side of Lake Champlain are almost hopeless, but that you have in the quarter of Utica flattering prospects of a prompt and competent supply. Let me then entreat of you sir, to employ every exertion, and strain every nerve to accomplish these expectations, and relieve the troops as speedily as possible. To accelerate your operations, the Quarter Master General has orders to co-operate with you by every means in his power ; and I must hope that your joint efforts may avert consequences that I tremble at the thought of.

JAMES WILKINSON.

James Thorne, Esq. co-partner and agent of Elbert Anderson, Esq. Army Contractor.

(*Extracts.*)

*Plattsburgh, Sept. 18, 1813.*

Sir—

If you will be so good as to state in writing your intention as verbally stated to day, to supply and issue all rations required for subsistence for the Troops of the U. States and Militia on this station, independent of my instructions or contract, it will confirm that high opinion I have of your candor and frankness, and which you perceive is matter so deeply interesting to me, and is essential in the future claims I may have on the Government.

With respect I am, &c.

ELBERT ANDERSON.

Maj. Gen. Wade Hampton,

Commanding the Army on Lake Champlain.

*Head Quarters, Cumberland-Head, Sept. 19, 1813.*

Sir—

I am this moment favored with your letter of yesterday's date——. It is my intention to make no demand on you as contractor, until the public supplies with

which you have nothing to do, and for the issue of which my arrangements have been made, before I knew you as Contractor, are exhausted; and that is not probable this campaign.

I have the honor to be, &c.

W. HAMPTON.

Elbert Anderson, Esq.

*Plattsburgh, Sept. 21, 1813.*

Sir—I have the honor to lay before you the correspondence between Gen. W. Hampton and myself since my arrival at this place. [No. 1 to 6.]

My disappointment is not to be regretted; and as there is a crisis in the campaign which ought not to be interrupted by a contention of individual claims, I must beg the Hon. Secretary of War to have the inclosed papers placed on file, and I hope there will be a period when the claim can come up independent of any inconvenience to the public.

I regret any untoward circumstance should have deprived me of exhibiting to Gen. Hampton my zeal in the execution of the small talent I may possess for the public service.

With sentiments of great respect, I am, &c.

ELBERT ANDERSON.

Hon. John Armstrong, Sec'y War.

*Plattsburgh, Nov. 18th, 1813.*

Sir

I am directed by the Commanding General, W. Hampton, to give notice to any agent of Mr. Anderson, Army Contractor, that, as the army have taken winter quarters, the duties of the Contractor, in relation to the supplies of the Army, will devolve on him, and he will please govern himself accordingly.

Most respectfully,

JAMES THOMAS.

Col. and Qr. Master Gen

James Thorne, Agent, &c.

*Plattsburgh, Nov. 18, 1813.*

Sir—

I am directed by Major General W. Hampton to give you notice that in relation to the supplies of the Army on this frontier, you are required to comply with your contract with the U. States for this purpose.

Most respectfully,

JAMES THOMAS.

*Col. and Qr. Master Gen.*

*Elbert Anderson, Esq. New-York.*

*New-York, Nov. 27, 1813.*

Sir—

In the absence of the Hon. Secretary of War, I must now request you to lay before the President of the U. States the enclosed letter with the copy of the correspondence with Gen. W. Hampton.

I have forebore to urge the force of my claims, and the injury I would sustain by the refractory disposition of Gen. W. Hampton, because I did not wish to mar the operation of Government at so momentous a period in the campaign; those reasons are now at an end, and if I am to resume my duties, this is the moment for the President of the U. States to give instructions through the proper department.

I beg leave through you, sir, to assure the President of the sentiments of respect in which I hold his character, and shall always be happy to obey his commands.

I remain, sir, your ob't. servant,

ELBERT ANDERSON.

Daniel Parker, Esq.

*Plattsburg, Dec. 22, 1813.*

SIR,

I have been informed that the Accountant of the War Department has prepared a statement of my accounts for the last Contract, and that the principal point for your decision is the allowance of casks and packages for provision that has been placed in deposit. Permit



me, sir, to state to you, that this claim is so clear and just, and so well established by former precedent, that I am persuaded you will not hesitate a moment in allowing the charges. The first issue I ever made under my first contract in 1809, was for troops on the move for N. Orleans; Dr. Eustis decided that the casks and packages did not constitute any part of my contract, and that they must be paid for. In truth, sir, any Corps or Detachment on the march that draws for rations, and requires casks or packages, they have been allowed on being endorsed on the back of the abstract, or a separate receipt. Our contract is for *rations*, and when deposits are required, the casks are furnished for the convenience of Government to preserve the provisions. Exclusive of these considerations, we have furnished deposits of *flour* and *salt* meat, when our contract says the option of bread for five days in seven, shall be with the contractor, and fresh beef to be issued in due proportion, or conformable to regulations of the Commander in Chief.

You must be aware, sir, that the contract of last year was fulfilled with great hazard and the most indefatigable exertion on the part of the contractors, who had been called upon to make deposits—when they had to contend with the difficulties of a scanty crop—the exorbitantly high price of all the articles of supply, flour especially, which was 12 dollars per barrel, when our contract-price was only seven dollars, 34-100, including the barrels; and these difficulties were increased by the liberality of our Government allowing the Contractors for the Army of Spain and Portugal to be competitors in our market.

The Honorable Secretary knows I feel great solicitude in having my accounts speedily closed, and in doing justice to me he will have due regard to my claim and the national interest. Yours, &c. E. ANDERSON.

Hon. John Armstrong, Sec'y of War.

*Plattsburgh, January 11, 1814.*

SIR,

The public service imperiously demands that at least ninety days' sound and wholesome rations, daily

issues for 6000 men should be deposited at the French Mills, also at Chateaugay-Four-Corners for 2000 men, daily issues, and in like manner at this place four thousand rations, daily issues. No circumstance which it may be practicable to avert, should obstruct the most prompt execution of this requisition, which ought to be carried into complete effect by the 2d of next month.

To prevent the effects of the enterprize of the enemy, which we ought to look for, the sleighs or waggons employed by you in the transport, should march in considerable numbers, and on application to the Commanding Officer, he is directed to furnish the necessary escorts to Chateaugay. With consideration and respect, I have the honor to be your ob't serv't,

JAMES WILKINSON.

Elbert Anderson, Esq. Contractor for Army supplies.

*Head Quarters, Batavia, Jan. 20, 1814.*

The Contractor

Will deposit without delay provisions for the troops in the United States service, at the following places, viz : at Williamsville, 175,000 rations  
Batavia, 225,000 "  
Warrens Ridge-road, 100,000 "  
Your's,

A. HALL.

*Maj. Gen. of Niagara Frontier.*

*Memorandum.*—I shall require Maj. Allen, Contractor's agent, to deposit at Batavia 50,000 complete rations of provision, and in like manner to deposit at Canandaigua 150,000 rations, these deposits will be made as a sort of reserve.

W. SCOTT.

*Col. of 2d Regiment of Artillery.*

*French Mills, Feb. 7, 1814.*

SIR,—The movement of the troops requires that you should take up and transport all the provision and stores

at this post, Malone, and Chateaugay to Plattsburg, as soon as possible, excepting about twenty days rations. And it is essential that your supplies, until further orders, should be directed to Sackett's Harbor and Plattsburg, at the first place for about four thousand, and at the second for about six thousand men, daily issues.

The bread at Chateaugay, if condemned, should be sold or destroyed. With consideration and respect, I am, sir, yours,

JAMES WILKINSON.

J. Thorne, Esq. Contractor's Agent.

*(Extract.)*

*New-York, Feb. 8, 1814.*

Sir—

I advised you on the 14th January that I had received an order from the Quarter Master General and Major General Jas. Wilkinson to transport 90 days provision to French Mills and Four Corners. The great stress Gen. Wilkinson laid on the due execution of this order, (a copy of which I enclosed) induced me to see its execution before I left the frontier.

In the trying occurrence on the Niagara frontier, I have the satisfaction to hear that my faithful agent, Major Allen, has met the emergencies with a promptness and ability that deserve the highest praise; for your information on this head, I enclose you copies of orders of General Hall for deposits at Three Points. Colonel Scott thinks that Warren's and Williamsville are too far in advance. I still think a magazine in reserve should be laid up, &c. &c. but in this as well as in all other matters, I shall submit to the will and wisdom of Government.

With great respect,

I am your's, &c.

ELBERT ANDERSON.

Hon. John Armstrong, Secretary of War.

*Extract from a letter to James Madison, late President, dated Westchester, 12th Oct. 1823.*

“ I now take the liberty to send you inclosed copies  
 “ of letters which were the subjects of confidential con-  
 “ ference at the period they were written,\* and likewise  
 “ a late letter from the former head of the War Depart-  
 “ ment. Can I flatter myself with any expression of  
 “ your views of my past services, such as one citizen may  
 “ render to another in his best recollection of past e-  
 “ vents.” I am, &c.

ELBERT ANDERSON,  
 Late Contractor.

\* Dated 2d & 6th Jan. 1813.

*Montpelier, Oct. 22, 1823.*

SIR,

The attention of the Executive of the U. States being divided among the several Departments, he cannot be supposed as particularly acquainted with the transactions under each, as the respective heads of them. What I can say with truth and pleasure in your case is, that every thing I recollect to have known of your agency in supplying the army during the late war was favorable to the ability and zeal with which the trust was executed.

With friendly respects,

JAMES MADISON.

Elbert Anderson, Esq.

*Red Hook, August 12, 1823.*

DEAR SIR,

I received your letter of the 4th instant a day or two ago ; I am, as you well know, no great panegyrist of either dead or living public functionaries ; but this fact notwithstanding, it by no means follows, that I should have any hesitation in speaking favorably of them, or of their conduct, when the latter shall have been such as, in my opinion, entitled them to praise. On this general principle, and under the best recollections I have of the manner in which you discharged your duty as an Army

Contractor, I have no scruple in saying, that it was both able and honest, fulfilling as far as was perhaps possible under the circumstances of the times, the injunctions of the law, and the objects and expectations of the Government, and, on some occasions, showing a disposition to promote the success of pending military operations by doing rather more, than less, than was prescribed by the letter of your contract.

It was the joint effect of this disinterestedness and of the opinion entertained of your general capacity for business, that induced me, with the approbation of the President, to sound you on the subject of supplying the Army by a Commissariat, instead of contracts, and virtually to offer to you the direction of a department of that description. This fact is perhaps the best illustration I could give of the consideration in which you were held by the Executive of that day, and which takes a new force from the circumstance, that when the offer was declined by you, it was not made to any other person.

I am, dear sir, respectfully your obedient humble servant,  
**JOHN ARMSTRONG.**

Elbert Anderson, Esq.

*Washington City, November 30, 1823.*

Dear Sir—It is but justice to give you credit for the part which you bore in the late war with Great Britain, when you not only exerted yourself to sustain the administration by all the means in your power, but likewise efficiently combatted opinions which were hostile to the interests and liberties of the people. To your exertions in the Commissariat, the army, serving on the northern and southern frontiers of the State of New-York, was peculiarly indebted, and has acknowledged with gratitude your prompt and sufficient supply of those articles of subsistence essential to their well being, at a time it was difficult to supply the troops with necessaries of any description. That the administration was satisfied with your conduct in the important and arduous duties which you had undertaken, is well known, and as far as your opera-



tions have come under my observation, I have had every reason to be perfectly satisfied not only with your zeal, activity and system, but with the liberality and perfect fairness of your dealings, to say nothing of the gratuitous supplies of vegetables to the Hospitals for the use of the sick and wounded.

With sentiments of respect and esteem,

I remain, dear sir,

Your most ob't. servant,

ALEX. M'COMB, *Maj. Gen.*

ELBERT ANDERSON, Esq.

*Bloomfield, Ontario Co. N. Y. Oct. 27, 1823.*

Elbert Anderson, Esq.

Sir—By your request I have examined and compared the vouchers, orders, &c. which took place and occurred on the Niagara frontier, in the winter of 1813 and 1814, between you as Army Contractor, by your agent Nathaniel Allen, Esq. and myself as commanding officer on that station. At the time I assumed the command, the frontier had in part been laid waste by the enemy, viz : from Fort Niagara to the Falls—and all the public provisions, stores, &c. in that quarter had been destroyed. And on the 30th of December 1813, the remaining part of the Frontier, to wit : Buffalo and Black-Rock, together with all the supplies for the Army, were likewise destroyed.

Thus situated, I called on your agent, Major Allen, for immediate supplies, which he furnished with promptitude, without availing himself of the thirty days notice, as I understand was allowed by the contract—and no doubt those supplies were furnished in most instances at a much greater expense than they would have been, had the usual time been taken to have completed the several requisitions, viz : the 1st bearing date the 24th December 1813, and directing ten thousand rations to be delivered in deposit near Lewiston.—2d, the 3d of January 1814, directing thirty thousand meat rations to be furnished at Williamsville.—3d, the 9th of January 1814,

on the Public Store-keeper at Handford's Landing.—4th, the 10th of January 1814, for one hundred thousand complete rations, to be deposited at Williamsville.—5th, dated 20th of January 1814, for viz :

175,000 complete rations at Williamsville.

225,000 do do " Batavia.

100,000 do do " Warren's on Ridge-road.

And I am well satisfied that the greater part of the supplies, furnished to fulfill the above requisitions, were taken from the place or places where the purchases were severally made, and transported directly to the several deposits pointed out by my orders. And I may further add that the places of deposit\* were in some instances entirely out of the direction of the posts to which my orders directed the supplies to be carried, and consequently the transportation of them to the original places of deposit at the time, would have been attended with serious inconvenience to the United States.

I am, sir, most respectfully,

Your obedient humble servant,

AMOS HALL,

*Late Major Gen.*

\* *Places of original deposits, by order of the secretary of War was, Fall-town, Genessee river. [Page 16 claim for transportation.*

## CONTRACTS, DOCUMENTS, &c.

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**ARTICLES OF AGREEMENT** made on the 7th day of November, Anno Domini one thousand eight hundred and eleven, between William Eustis, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, Junior, of the city of New-York, of the other part.

*This Agreement Witnesseth,* That the said William Eustis for and on behalf of the United States of America, and the said Elbert Anderson, Jun. his heirs, executors and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz :

*First.* That the said Elbert Anderson, Jun. his heirs, executors or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched or recruited within the limits of the State of New-York (Niagara and its dependencies excepted) and the State of New-Jersey, thirty days notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and twelve, until the thirty-first

day of May, eighteen hundred and thirteen, at the following prices ; that is to say, at any place where rations shall be issued within the city and harbor of New-York for thirteen cents five mills per ration, within all other parts of the State of New-York at fourteen cents per ration, and within the State of New-Jersey for fifteen cents five mills per ration. Where the price of the ration is thirteen cents five mills, the component parts thereof shall be, for meat five cents, bread or flour four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fourteen cents the component parts thereof shall be for meat five cents five mills, flour or bread four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fifteen cents five mills, the component parts shall be, for meat six cents, flour or bread five cents five mills, liquor three cents, small parts one cent. The prices of the component parts of the small parts of the ration shall be eighteen cents per pound for candles, twelve cents five mills per pound for soap, four cents five mills per quart for vinegar, and two cents five mills per quart for salt.

*Second.* That the ration to be furnished and delivered by virtue of this contract, shall consist of the following articles, viz : One pound and a quarter of beef, or three quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whiskey or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and an half of candles, to every one hundred rations.

It is understood, that it shall be in the option of the general or officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by general orders, to be promulgated a reasonable time before the issue is to commence ; that in all cases where salted provisions are issued, the article of salt shall not be required ; that the contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the contractor.

*Third.* That supplies shall be furnished by the said Elbert Anderson, Jun. his heirs, executors or administrators, at the fortified places and military posts, that are or may be established in the States of New-York and New-Jersey aforesaid upon the requisition of the commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration. And the said Elbert Anderson, Junior, when required by the Secretary of War, shall, instead of the ardent spirits mentioned, furnish to the troops of the United States, stationed in the harbor of New-York, an equivalent in good malt liquor or light wines, at such season of the year, as in the opinion of the President of the United States, may be necessary for the preservation of their health.

It is understood that if the contractor shall be required to deposit provisions at one place or post and shall afterwards be required to move them, to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

*Fourth.* That whenever and as often as the provisions stipulated to be furnished under this contract, shall, in the opinion of the commanding officer of the post or place, where they are offered to be issued, be unsound, unfit for use, or of an unmerchable quality, a survey shall be held thereon, by two disinterested persons, one to be chosen by the commanding officer, and the other by the said Elbert Anderson, or his agent, and in case of disagreement, a third person to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, Jun. or his agent, shall fail, or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such



persons as he may think proper, to inspect the provisions, under oath, with power to condemn, as aforesaid. And all provisions condemned by such survey may be destroyed by the commanding officer.

*Fifth.* That the commanding general, or person appointed by him, at each post or place, in case of absolute failure, or deficiency, in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, Jun. his heirs, executors or administrators.

*Sixth.* That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

*Seventh.* That the escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy shall be furnished, whenever in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service, and that the said Elbert Anderson, Jun. his heirs, executors or administrators shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

*Eighth.* That at all stationary posts, proper store-houses shall be provided on behalf of the public, for the reception and safe-keeping of the provisions deposited from time to time, at such posts respectively; and the contractor shall suffer no loss for want of such stores.

*Ninth.* That the said Elbert Anderson, Jun. his heirs, executors or administrators, shall render his or their accounts to the Accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said Accountant may be established and made known to.

*Tenth.* That all such advances of money as may be made to the said Elbert Anderson, his heirs, executors or administrators, for and on account of the supplies to be furnished, pursuant to this contract, and all such sums of money as the commanding officer of the troops or recruits that are or may be within the States above mentioned, may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, Jun. his heirs, executors or administrators in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum, per annum, *from the time of such expiration*, until the same shall be actually repaid. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, Jun. his heirs, executors or administrators, be found to be due to him or them on account of the rations which shall be supplied, pursuant to this agreement, *the same shall immediately be paid.* And that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of the said Elbert Anderson, Jun. his heirs, executors or administrators. Provided however that no member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefits to arise therefrom.

*IN WITNESS whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the Seal of the War Office of the United States ; and the said*

*Elbert Anderson, Junior, hath hereto set his hand  
seal the day and year first above written.*

W. EUSTIS.

(SEAL U. S.)

ELBERT ANDERSON, JUN.

(L. S. E. A.)

*Signed sealed, and delivered }  
in the presence of }*  
DANIEL PARKER,  
JOHN J. ABERT.

WHEREAS, by a certain agreement made on the 7th day of November, 1811, between W. Eustis, Secretary of War, and Elbert Anderson, Jun. of the State of New-York, it was stipulated, that the deposits of three &c. months supplies of rations may be required. Now therefore it is agreed by the order of the said W. Eustis to Major-General Henry Dearborn, that when issues are required from the public deposits, that he might call on the said Elbert for that purpose.

*First.* That an inventory shall be taken as soon as possible, which shall comprise all such supplies as shall have been actually delivered *on or before the last day of May, 1813, next*, by virtue of the said agreement, and shall on that day remain unexpended.

*Second.* That the inventory shall be taken in the presence of the commanding officer of the post, and the party of the second part of this agreement, or his agent, and duplicate receipts given therefor by the said party of the second part, or his agent, expressing the quantity and quality of each article, *or delivery to be made by the public store-keepers or other agents who have charge of the deposits.*

NOTE.—*The rations are charged at the money price of the contract, and not in kind.*

*Third.* That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the preceding article, he being allowed however a deduction of twelve and a half per cent as a full allowance for wastage, leakage and damage of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

*Fourth.* That the party of the second part shall issue all the supplies as aforesaid, to the troops at the several posts, in rations to consist as follows, viz :

*Eighteen ounces of bread or flour.*

*One pound and a quarter of beef, or three quarters of a pound of pork.*

*One gill of rum, brandy or whiskey.*

*And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and an half of candles to every hundred rations.*

*Fifth.* That the said party of the first part shall pay or cause to be paid to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same.

*IN WITNESS whereof, the said H. Dearborn in behalf of the Secretary of War, on behalf of the United States, hath hereunto subscribed his name, and affixed his Seal ; and the said Elbert hath hereto set his hand and seal the day and year last above written.*

H. DEARBORN. (L. S. H. D.)

ELBERT ANDERSON.

(L. S. E. A.)

*Signed sealed, and delivered }  
in the presence of }*

*War Department, Nov. 27, 1812.*

SIR,

In my letter of October 29th, you were informed that arrangements would be made with the contractors for issuing the deposit of provisions which had been required of them. Messrs. Anderson and Byers expressed a willingness to make the issues ; and *in case you should find it for the public interest to employ them in preference to other agents, you are authorized to fill the blank attached to their contracts accordingly.*

I have the honor to be very respectfully, sir, your obedient servant,

W. EUSTIS.

Major-General Henry Dearborn, Plattsburg.

*By the President of the United States of America.*

### A PROCLAMATION.

WHEREAS the Congress of the United States, by virtue of the Constituted Authority vested in them, have declared by their Act, bearing date the eighteenth day of the present month, that WAR exists between the United Kingdom of Great Britain and Ireland, and the Dependencies thereof, and the United States of America and their Territories ;—*Now therefore*, I, JAMES MADISON, President of the United States of America, do hereby proclaim the same to all whom it may concern : And I do specially enjoin on all persons holding offices, Civil or Military, under the authority of the United States, that they be vigilant and zealous, in discharging the duties respectively incident thereto : And I do moreover exhort all the good people of the United States, as they love their country ; as they value the precious heritage derived from the virtue and valor of their fathers ; as they feel the wrongs which have forced on them the last resort of injured nations ; and as they consult the best means, under the blessing of Divine Providence, of abridging its calamities ; that they exert them-



selves in preserving order, in promoting concord, in maintaining the authority and the efficacy of the laws, and in supporting and invigorating all the measures which may be adopted by the Constituted Authorities, for obtaining a speedy, a just, and an honorable peace.

*In testimony whereof*, I have hereunto set  
SEAL. my hand, and caused the seal of the U. States to be affixed to these presents.

Done at the City of Washington, the nineteenth day of June, one thousand eight hundred and twelve, and of the Independence of the United States the thirty-sixth.

(Signed)  
By the President.  
(Signed)

JAMES MADISON.

JAMES MUNROE,  
Secretary of State.

(CIRCULAR.)

*New-York, June 24, 1812.*

Sir—

In addition to my Circular of the 20th May, (a duplicate of which you will find inserted below) I now enclose you the President's Proclamation, announcing a Declaration of War against Great Britain and her Dependencies. At this important epoch in the history of our country, it becomes me in my official capacity to call your attention to the duties assigned to you respectively, as Agents or Sub-Contractors for the supply and issue of rations to the Troops of the United States

Your principal has contracted with the government to supply all rations that may be required in the States of New-York and New-Jersey, containing a maritime frontier extending from the Eastern extremity of Long-Island to the Capes of the Delaware, and of a Northern inland frontier from Niagara to the outlet of

Lake Champlain. You must at one view perceive the seat of war your country is justly and necessarily engaged in, and your united exertions are of the utmost importance in the contest for our rights as an independent nation. You are associated with your principal in the share of censure, if censure is due, and you are to partake with him in the applause that your countrymen may be disposed to give your honest exertions. For the want of activity and industry in the general and subordinate concerns of this department, disasters may occur that *might otherwise have been avoided, if the proper steps required of you had been taken in time.* You have previously been instructed to look to the resources of your district, and to inform me, at proper intervals, what reliance can be placed on your district, county or town, for supplies that may be required. This necessary information will enable me to communicate with the Commanding General, and state to him where and how supplies may be had with the least inconvenience to the public service. By possessing this information, it will give me time to meet any scarcity in your district, by transporting supplies from other places or either of the deposits.

You have likewise been instructed not to offer or issue any Provision that should appear unsound, or of an unmerchable quality. For this purpose it will be necessary for you to be extremely vigilant, frequently examining the state of your issues, and take especial care that your Salt Provisions at this season of the year has its proper quantity of salt, and each barrel full of good pickle. Our country is blessed with plenty of *wholesome food*; and as the health and vigor of the Army depend in a great measure on a strict and faithful fulfilment of your duties, you are seriously to reflect if, at this crisis, your talents and resources are fitted for the station you now hold; and should you conclude to decline this Agency, you will immediately inform me, so that other arrangements may be made in season.

In addition to the just and proper scrutiny of the Officers of the Army, the eyes of the public will be continually upon you; and without the greatest prudence

and discretion on your part; your station at this time will excite the envy of some and the jealousy of others. You are not now to learn, that men are as different in their sentiments and opinions as in their countenances and numbers; consequently you may expect that your best exertions will not always be rewarded, and that universal satisfaction is not to be expected—but this will not deter you from doing your duty. You will listen to objections against your Provisions with patience, and investigate any complaints with temper and moderation; at the same time you will maintain your own rights, and the just rights of your principal, with dignity and firmness. Go straight forward in the path of your duty, and you will sooner or later obtain the good opinion of the Officers, the love and respect of the Soldiers, and what is more, the approbation of your own conscience.

You will have the enclosed instructions made known to those who supply Recruiting Rendezvous in your district; and it will be proper at this time to give publicity to that article of the contract which regulates the condemnation of unmerchantable Provisions.

The Contractor requires all Agents and Sub-Contractors to issue, on the 4th of July next, one gill of Whiskey to each man in his district, and one bushel of Peas or Beans to every sixty men, or an equivalent in other vegetables, being extra from their allowance by law, which issue will be charged to me when you transmit your next account, separately from the abstract.

(COPY.)

*Article Fourth of Contract for the Supply and Issue of Rations, dated 7th day of November, 1811, commencing the 1st of June, 1812, ending 31st of May, 1813.*

“THAT whenever and as often as the Provisions stipulated to be furnished under this contract, shall, in the opinion of the Commanding Officer of the post or place where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey

"shall be held thereon by two disinterested persons,  
 "one to be chosen by the Commanding Officer, the other  
 "by the said ELBERT ANDERSON, JUN. or his Agent, and  
 "in case of disagreement, a third person to be chosen by  
 "mutual consent, who shall have power to condemn such  
 "part of the Provisions as to them may appear unfit for  
 "use: but if the said ELBERT ANDERSON, JUN. or his  
 "Agent, shall fail or neglect to appoint a person to in-  
 "spect the said Provisions, after reasonable notice in  
 "writing, it shall be permitted to the said Commanding  
 "Officer to appoint such persons as he may think proper  
 "to inspect the Provisions, under oath, with power to  
 "condemn as aforesaid; *and all Provisions condemned*  
*"by such survey, may be destroyed by the Commanding*  
*"Officer."*

ELBERT ANDERSON, JR.

*Army Contractor.*

*New-York, May 20, 1812,*

ANNEXED you have the arrangements now in ex-  
 istence for the supply and issue of rations to the Troops  
 of the United States. When Troops move out of your  
 district, either to recruit or on a march, you will be pleas-  
 ed to forward notice of such movement immediately to  
 the Agent in the district they move to, likewise a dupli-  
 cate of such notice will be transmitted to me. It is ex-  
 pected the Commanding Officers will give notice in the  
 first instance, and state the "number of men to be fur-  
 nished on the march or at a station." By this means  
 proper and timely supplies will be furnished to meet any  
 sudden movement of Troops. Agents of districts will  
 distribute blank abstract forms to the Recruiting Ren-  
 dezvous within their limits, and they will consider them-  
 selves accountable that the blanks in the abstract are filled  
 up agreeably to the original returns, and signed by the  
 Commanding Officer. The dates ought to correspond  
 with the number of days inclusive, and the days with the  
 number of men, and the column of remarks must state  
 to whom issued, (to Troops under the command of, &c.)

(to Recruits. &c.) (to Militia, &c.) The total number of rations must be inserted *in words at full length*, in the certificate at foot of the abstract. Duplicate abstracts from the beginning to the end of each month are required, and will be transmitted punctually to me at the end of every month.

[Here follows a list of Agents, &c. their district of supplies and place of residence.]

ELBERT ANDERSON, JR.

*Army Contractor.*

*Washington, Dec. 28, 1812.*

The Honorable Secretary of War,

SIR,

In behalf of myself and associates, I will *supply* all rations that may be required for the troops of the U. States, marched, stationed or recruited within the City and Harbor of New-York, at Greenbush, from the first day of June, 1813, to 31st of May, 1814, at 14 cents 8 mills, to wit:

Meat	5 5
Liquor	3 5
Small parts	1
Bread or Flour	4 8
	<hr/>
	14 8

In all other parts of the State of New-York, including its northern vicinity as far as St. John's, on Lake Champlain, at 17 cents 5 mills, to wit:

Meat	5 5
Liquor	3 5
Small parts	1
Bread or Flour	7 5
	<hr/>
	17 5

For the State of New-Jersey, 16 cents 2 and an half mills per ration.

If the troops of the United States should enter the



Canadas at any time previous to the 31st of May, 1814, this proposal will embrace all supplies that may be required in the enemy's country, from Fort George along the shores of Lake Ontario and the river St. Lawrence, until it intersects the out-let of Lake Champlain.

The price of the rations to be *augmented* in proportion to the difficulty and expense of transporting in the enemy's country, with a reserve on the part of the United States to reduce the component part of the bread ration, to bear a *proportionate value* to the other parts of the ration, when the price of bread-stuff shall, in the opinion of the Honorable Secretary at War, justify such alteration or reduction.

The Honorable Secretary at War will perceive that, the price of the component parts of the ration are the same as the present contract, the bread or flour excepted: And that the price of this article is not in proportion to its increased value and *alarming scarcity* of bread on the northern frontier.

When the price of the bread ration is 4 cents 3 mills, the value of flour is at the ratio of \$8 35 per barrel, when the flour ration is estimated at 6 cents 2 1-2 mills.—Note, the value of Flour is only 10 dollars 37 1-2 cents per barrel.

It is believed that all the other component parts of the rations are estimated as low as possible: The article of liquor bearing the highest proportion, being subject to great leakage and wastage; and in consequence of the partial importations of foreign spirits, and the very high price of grain in our own country, there must be an inevitable rise take place in the value of home distilled spirits.

The aforesaid proposal is made without reference or regard to any opposition bid, but from a perfect knowledge of the intrinsic value of the articles contracted to be delivered and issued, and the difficulty of obtaining bread-stuff and liquor, without transporting from southern Atlantic ports, early in the spring, to places contigu-

ous to the Northern Frontier. All of which is humbly  
submitted by

Your ob't servant,  
ELBERT ANDERSON, JR.

NOTE.—The transportation of flour from the Hudson  
to Lake Champlain is equal to 1 cent  $2\frac{1}{2}$  mills per ra-  
tion on Flour. E. A. JUN.

*Department of War, Aug. 16, 1823.*

Washington, January 2, 1813.

SIR,—In compliance with a request of the Honorable Secretary at War, I now have the honor to annex a statement of the probable value of a ration within the District of New-York, and its northern and western frontier.

Articles composing the rations.	Quotation price at New York per barrel &c		No of rations in each bbl &c	Component parts of Rations		Making a value to the barrel		Average value of the Ration		REMARKS.
	Dolls	Cents		Cents	Mills.	Dolls	Cents	Cents	Mills	
Prime Beef	7	00	160	5	5	8	80	5	5	A loss of 7 1-2 per cent in issuing beef in detail.
" Pork	14	50	266 $\frac{2}{3}$	5	5	14	69 $\frac{7}{10}$	5		
Flour	11	50	174 $\frac{9}{10}$	6	7 $\frac{1}{2}$	11	75	6	7 $\frac{1}{2}$	{ A gain in making bread where we have Ovens, and suitable Bakers of 10 to 12 1-2 per cent
a		12 00								
Liquor pr gallon		64	32	2		64		2		{ A loss on liquor in leakage and wastage of 10 to 12 1-2 per cent.
SMALL PARTS										
4 lbs. soap a 10ct		40	to each 100 rations.							{ The gain to be obtained in the current issue, is made in the purchase of a large stock of provisions and in seasons and periods when the market is lowest
1 $\frac{1}{2}$ lbs. Candles		24								
1 gallon Vinegar		18								
Salt average pr q		2 $\frac{1}{2}$								
										15 1
Gen. expense of issue 5 pr cent										7 $\frac{1}{2}$
Transportation as per weight of a ration										
	Meat	Flour	Liquor	Small pts.						
	lb oz	lb oz	oz	oz	Total weight					
	1	1	2	4	2 $\frac{1}{2}$ of a ration					
					lb oz.					
					2 8 $\frac{1}{3}$					
Weight of packages composed of barrels, casks and boxes.					aver. 33 $\frac{1}{3}$ of the whole					
					13					
					3 5 $\frac{1}{2}$					
					3 1					
					189 $\frac{1}{2}$					
										PER RATION.
Errors Excepted										

Errors Excepted

All of which is respectfully submitted by your obedient servant,

E. ANDERSON, JUN.

Hon. Sec'y of War, Washington.

\* This letter and the subsequent one of 6th inst. were written by request of Hon. James Monroe, to be laid before the President.

## EXPOSE,

*Submitted to the acting Secretary of War, and Secretary of the Treasury, by request of Honorable James Munroe.*

*Washington, Jan. 6, 1813.*

SIR,

I have maturely considered the subject that occupied our conversation yesterday, as it respects a *definite price* for the rations that may be required below the confluence of the river Sorrel with the St. Lawrence ; and with diffidence and respect I now have the honor to state my views on this important subject.

I have before stated, and I believe it is fully understood by the Government, that it is one of the first and essential requisites of a well-regulated campaign, to have suitable Magazines at convenient places “for the reception and safe-keeping of provisions that shall be deposited from time to time.” Those magazines should be remote from the depredations of the enemy, yet be locally situated, in places best calculated for the accommodation of the resources of the surrounding country, whilst at the same time, they should possess the advantages of water communication to such points as the army may concentrate. The amount of provision to be placed in deposit, must be regulated by the proportionate number of the army, the duration of service, and the local supplies that may be relied on within the enemy’s country. If the number of men to be victualed is ascertained, yet it will likewise be of importance to the person holding himself responsible for the supply, that he should be well acquainted with the water and land communications through which the troops may pass, so as to estimate with precision the value of the rations that may be required ; besides it must be obvious to all, that the train of Horses and the the number of Cavalry that may be attached to the army, will naturally increase the demand and price of bread-stuff in the rout which they shall be compelled to march. I shall not go at length in the examination of what re-

sources of bread-stuff can be relied on at places contiguous to the probable seat of War, because it might be considered as the exaggerations of one who is interested in the picture that he should draw, of the wants of a country, generally overflowing with corn, but now by the visitations of Providence,\* reduced to a bare and scanty supply for the subsistence of its own inhabitants: But it will be of great importance to state that, admitting the next ensuing crop should be productive and abundant, yet the late period it is collected, the early setting in of the frost, and the difficulty of transporting by land to suitable mills, are insurmountable obstacles, to its coming in aid of the next campaign.

But if any reliance should still be placed on the contingency of the next harvest—what will it avail, if the troops of the United States should have moved in advance, and should have actually entered the enemy's country. In the months of October and November the roads on the frontiers are impassable,† and the difficulty of transportation is increased by the early impediments of ice in the navigable waters. And if the army should make a rapid movement near the vicinity of the Capital of Lower Canada, those hazards and difficulties increase in the ratio of distance from our own Frontier, without a competent and ample magazine is laid up in the rear.—Should a military position be taken on the river St. Lawrence whilst the waters are open, and a due proportion of the necessary supplies of *flour and liquors* be drawn from the sea-board in season to be transported to the waters of Lake Champlain—then, and then only, can the Government safely rely on the subsistence of her army, even should they advance to the investment of the Fortress of Quebec, by a winter siege. If a general magazine should be established at Montreal, which would be the point of concentration for all minor stores, on Lake Ontario and Champlain, then the transportation to a point

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\* The crops of Wheat in the Northern and Western frontier of New-York, as is well known, failed and was damaged by the wet season of 1812.

† Gen Hamilton could not come to Gen. Wilkinson at French Mills with supplies in Nov. 1813, only on pack horses—Failure campaign 1813.



below the Sorrel, must constitute the only difference of price of the ration to Government. If the communications by the waters of the St. Lawrence are closed either by maritime superiority or the natural obstructions of ice the difference of transportation by carriage or sleds, will be as 2 to 3 in favor of the water communication. But, sir, to insure a speedy and certain transportation in the enemy's country requires a military power and despotic control beyond the civil arrangements of simple contracts†—because the civil contract would always be liable to extortion and disappointment—and finally the military power would have previously seized all the means of transportation for its own purpose. Thus to insure a definite price for the ration below Montreal, will depend on the number of men to be supplied. The amount of supplies that may be obtained in places contiguous to the general magazine, but especially on the amount of bread-stuff, &c. that shall be secured on the sea-board before the price shall be enhanced by the demand abroad or the scarcity at home; the value of transportation must, as before stated, depend on the *season of the year, and means of transportation*. The first, it is probable, difficult for the Government to ascertain, as the movements of the enemy will increase or diminish the proportion of force required to oppose them. The last must rest on those contingencies, that no human foresight can control. Under such considerations, I could not consistent with the duty I owe myself—that confidence and those obligations‡ that are the property of my friends, and that love and veneration I profess for my country place in jeopardy the one, and hazard the vital interest of the other, by undertaking a responsibility so fraught with difficulties and unforeseen events. I have therefore to suggest the propriety of having a *special organized staff*, for the purpose of transporting the public provision from the Depots through the

† In our own territory and in populated districts it is safe, certain, and most economical—in distant frontiers and in the enemy's country, such as Gen. Jackson traversed in the Seminole war, military power must be resorted to; indeed the civil contract, is not obtainable.

‡ A bond was given in the sum of 100,000 dollars, with the guarantee for the fulfilment of the contract of six respectable and wealthy citizens.

**ARTICLES OF AGREEMENT**, made on the Twenty-Fifth day of February, Anno Domini, One Thousand Eight Hundred and Thirteen, between John Armstrong, Secretary for the Department of War of the United-States of America, of the one part, and Elbert Anderson, Junior, of the City of New-York, of the other part.

*This agreement witnesseth*, that the said John Armstrong, for and on behalf of the United States of America, and the said Elbert Anderson, Jun. his heirs, executors and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz :—

*First.*—That the said Elbert Anderson, Jun. his heirs, executors or administrators, shall supply, and issue all the rations, to consist of the articles herein after specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched or recruited within the limits of the State of New-York and the Western and Northern vicinity, within the Canadas, thirty days notice being given of the post or place where rations may be wanted, or the number of Troops to be furnished on their march, from the first day of June, eighteen hundred and thirteen, to the thirty-first day of May, eighteen hundred and fourteen, both days inclusive ; at the following prices, that is to say, at any place where rations shall be issued within the City and Harbor of New-York, and the encampment of Greenbush, at *fourteen cents eight mills* per ration : at all other places within the state of New-York and the Canadas, at seventeen cents five mills per ration : provided, however, that for all rations required within the enemy's territory, the price of the ration shall be augmented in proportion to the expense of transportation and issue in the enemy's country. The supplies having been delivered on account of Government at magazines, designated for that purpose, within the state of New-York, and when it may become necessary, the public agents, boats and teams shall be employed in transporting from such depots by order of the Com-

manding General, on representation of the Contractor, or his proper agent, that such transportation cannot be furnished independently of the army assistance : Provided, also, that the Contractor shall at all times have *reasonable notice*, when and where deposits are to be made for transportation into the enemy's country, as well as the amount required for that purpose. Where the price of the ration is fourteen cents eight mills, the prices of the component parts of the same shall be, for meat, five cents five mills ; for bread or flour, four cents eight mills ; liquor, three cents five mills, small parts, one cent. Where the price of the ration is seventeen cents five mills, the price of the component parts of the same shall be, for meat, five cents five mills, bread or flour, seven cents five mills ; liquor, three cents five mills ; small parts one cent. The prices of the component parts of the small parts of the ration shall be, eighteen cents per pound for candles ; twelve cents five mills per pound for soap ; four cents five mills per quart for vinegar, and two cents five mills per quart for salt : Provided also, that the thirty days notice required to be given by the government of the port or place where rations may be wanted shall not be understood, to apply when the rations are taken from any deposit previously made on account of the Government.

*Second.* That the ration to be furnished and delivered by virtue of this contract, shall consist of the following articles, viz : one pound and a quarter of beef, or three quarters of a pound of salted pork ; eighteen ounces of bread or flour ; one gill of rum, whiskey or brandy ; and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and an half of candles to every hundred rations.

It is understood, that it shall be in the option of the General, or Officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by General orders to be promulgated a reasonable time before the issue is to commence ; that

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It is understood, that it shall be in the option of the General, or Officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by General orders to be promulgated a reasonable time before the issue is to commence ; that



in all cases where salted provisions are issued, the article of salt shall not be required ; that the Contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week to be with the Contractor.

*Third.* That supplies shall be furnished by the said Elbert Anderson, Jun. his heirs, executors or administrators, at the fortified places and military posts, that are or may be established in the limits aforesaid, upon the requisition of the Commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions ; consisting of due proportions of all the articles forming the ration.

It is understood that if the Contractor shall be *required to deposit* provisions at one place or post, and shall afterwards be required to move them, to be delivered at *any other place or post*, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

*Fourth.* That whenever and as often as the provisions stipulated to be furnished under this contract, shall, in the opinion of the Commanding Officer of the post or place where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon, by two disinterested persons, one to be chosen by the Commanding Officer, and the other by the said Elbert Anderson, Jun. or his agents, and in case of disagreement, a third person to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use : but if the said Elbert Anderson, Jun. or his agent, shall fail or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted by the said Commanding Officer to appoint such persons as he may think proper, to inspect the provis-

ions, under oath, with power to condemn, as aforesaid. And all provisions condemned by such survey or inspection, may be destroyed by the Commanding Officer.

*Fifth.* That the Commanding General, or person appointed by him, at each post or place, in case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, Jun. his heirs, executors or administrators.

*Sixth.* That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the Contractor, as *well as in other property necessarily used in transporting the same*, shall be paid for at the contract price of the rations, or the component parts, and at an *appraised value of the other articles*, on the deposition of one or more credible characters, and the certificate of a Commissioned Officer when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

*Seventh.* That escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy, shall be furnished, whenever, in the opinion of the Commanding Officer of the Army, or of any post, to whom application may be made, the same can be done without prejudice to the service, and the said Elbert Anderson, Jun. his heirs, executors or administrators shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

*Eighth.* That at all stationary posts, proper store-houses shall be provided on behalf of the public, for the reception and safe keeping of the provisions deposited from time to time, at such posts respectively; and the Contractor shall suffer no loss for want of such stores.

*Ninth.* That the said Elbert Anderson, Jun. his heirs,

executors, or administrators, shall render his or their accounts to the Accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said Accountant may be established and made known to him or them.

*Tenth.* That all such advances of money as may be made to the said Elbert Anderson, Jun. his heirs, executors or administrators, for and on account of the supplies to be furnished, pursuant to this contract, and all such sums of money as the Commanding Officer of the troops or recruits that are or may be within the limits aforesaid may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, Jun. his heirs, executors or administrators in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off, against the amount of such supplies, and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract together with an *interest at the rate of six per centum, per annum from the time of such expiration* until the same shall be actually repaid and that if any balance shall on any settlement of the accounts of the said Elbert, Anderson, Jun. his heirs, executors or administrators, be found to be due to him or them, for or on account of the rations which shall be supplied, pursuant to this agreement, *the same shall immediately be paid*, and that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of the said Elbert Anderson, Jun. his heirs, executors or administrators, provided, however, that no member of congress shall be admitted to any share or part of this contract ; or to any benefit to arise therefrom,

*IN WITNESS whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the Seal of the War Office of the United States; and the said*

*Elbert Anderson, Jun. hath hereunto set his hand  
and seal the day and year first above written.*

JOHN ARMSTRONG.

(SEAL U. S.)

ELBERT ANDERSON, Jun.

*Signed sealed, and delivered }  
in the presence of }*  
DANIEL PARKER,  
GEORGE BOYD.

*Whereas* by a certain agreement made on the 25th February eighteen hundred & thirteen, Between John Armstrong, Secretary at war. and Elbert Anderson, Jun, of State of New-York , it was stipulated that Magazines of Provision may be required of the said Anderson, for armies & troops of the United States. *Now therefore* it is agreed between the said John Armstrong and Elbert Anderson Junior.

*First.* That whenever deposits are ordered and have been made accordingly, an inspection shall be had, and an inventory shall be taken as soon as practicable, which shall comprise all such supplies as shall have been actually deposited for the United States by virtue of the *said Agreement*, and a certificate of such inspection and inventory furnished to the said Elbert Anderson Jun. or his agent.

*Second.* That where issues are to be made from *such deposits*, the said Anderson or his agent shall be called on for that purpose, and duplicate receipts given therefor by the said party of the second part or his agent, expressing the quantity and quality of each article.

*Third.* That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the *preceding article*, he being allowed however a deduction of twelve and a half per cent as a full allowance for wastage, leakage and damage of



whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

*Fourth.* That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the preceding article, issue of supplies as aforesaid to the troops at the several posts, in rations to consist as follows, viz :

Eighteen ounces of bread or flour,  
One pound and a quarter of beef, or  
three quarters of a pound of pork.  
One gill of rum, brandy or whiskey.

and at the rate of two quarts of salt, four quarts of vinegar four pounds of soap, and one pound and an half of candles to every hundred rations.

*Fifth.* That the said party of the first part shall pay or cause to be paid to the said party of the second part one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same, the transportation being furnished by the Government when the same may become necessary, and always at the public expense within the enemy's country.

*IN WITNESS whereof, the said Secretary of War on behalf of the United States, hath hereunto subscribed his name, and affixed the Seal of the War Office of the United States ; and the said Elbert Anderson, hath hereunto set his hand and seal the day and year last above written.*

JOHN ARMSTRONG.

(SEAL U. S.)

ELBERT ANDERSON, Jun.

*Signed sealed, and delivered }  
in the presence of }*  
DANIEL PARKER,  
GEORGE BOYD.



War Department May 17, 1813.

Sir—

Your letter of the 12th inst. has been received ; orders have been given regulating provision returns, a copy of which will be transmitted to you. The superintendant General of military supplies has been instructed relative to the kind and form of vouchers necessary to entitle you to a credit for deposits.

I am sir,

Your's, &c.

JOHN ARMSTRONG.

Elbert Anderson, Jun.  
Army Contractor.

### CIRCULAR—INSTRUCTIONS.

IT is necessary for every issue to be accompanied by a regular Provision Return, signed by the commanding officer ; if one or more Companies are stationed at a post or place, the senior officer on command, will embrace the whole number, as per form annexed ; otherwise the signature of the senior officer will be required to each company return ; but it being more consistent with military practice to embrace the whole issue in one schedule, the contractor will issue the whole, or distribute to each company. At the end of each month these returns will be inserted in an abstract, from the commencement to the end of the *calendar month*, in the form and manner prescribed. If any extra liquor, or other parts of a *ration* are issued, the total amount of rations issued, and the extra (if any) must be *inserted in words at full length*, at the foot of the provision return, as well as in the body of the certificate of the monthly abstract. The column of *remarks*, should always explain to whom the issue is made, "*to troops on a march*," "*to militia*," &c. at a station.—In furnishing troops on the march, it will be expected you will obtain the signature of the commanding Officer at the station they receive the rations. Such issue

can be inserted in the abstract of rations issued at that post ; but if no senior Officer should be at the post, you will have a blank abstract specially filled for the provisions, furnished to troops on the march, and the officer having command, will sign the same when you issue the rations.

*The blanks are filled up in the returns annexed, and the days drawn for are four, being as few as are generally drawn for in the regular service ; but commanding officers have an undoubted right to vary the number of days.*

All commissioned Officers whilst in the service of the U. States, are allowed by law, according to rank, a respective number of rations per day in kind or 20 cents in lieu, by the war department, for each ration, which is designated their *subsistence account*. If any officer should be stationed at a remote place, where it may be his *interest* to draw his subsistence in kind, from the contractor, in lieu of money from the war department, or paymaster, it will be necessary to furnish the contractor a *special return*, that the rations are a part of his subsistence for the number of days mentioned ; or, if an officer should take a waiter from the line of the army, and give him maintenance at his own expense, he can draw rations in kind or commute with the contractor in money, in lieu for such waiter's rations as a *soldier from the line* ; the waiters' name ought likewise to be mentioned in the return. This, as well as every provision return, must be signed or countersigned by the commanding officer at the post or place where the rations are furnished. It is hardly necessary to remark, that the contractor will receive no more for the aforesaid rations, than the general contract price.

Your's respectfully,

ELBERT ANDERSON, Jr. *Contractor*

# *Form of a Provision Return for a Regiment or Battalion.*

Provision Return for a detachment of Militia, in the service of the United States, stationed at \_\_\_\_\_ commencing the 22d, and ending the 25th of July, both days inclusive.

DISTRIBUTION.	No. days	No. Men	Number Women.	Number rations pr day	Total complete rations	Remarks to be made in column of abstract.
Capt.	4	51	2	53	212	
Capt.	4	45	2	47	188	
Capt.	4	60	3	63	252	
Capt.	4	55	3	57	228	
Detachment, (if any)	4	10		10	40	
[Note] Total.	4	221	9	230	920	

Militia stationed at this post, composed of Capt. Cook's, Green's, Brunell's and Morse's companies and a detachment of

THE Contractor will issue nine hundred and twenty complete rations, agreeable to the above return.

Signed

By the Commanding Officer.

[Note] This total issue, to five or more companies, will constitute only one entry in the monthly abstract.

ABSTRACT OF RATIONS issued from the \_\_\_\_\_ to the \_\_\_\_\_  
to the Troops of the United States, &c. under the command of \_\_\_\_\_  
at \_\_\_\_\_

under the contract of ELBERT ANDERSON, Jan.

DATES.	
181	
No. of Return	
Number of days drawn for.	
No. of Men.	
No. of Women.	
No. of complete rations.	
EXTRA.	
REMARKS.	

I certify, That I have carefully examined the above Abstract with the original returns now in my possession, and find it a correct and true account of issues to the Troops, &c. at the post under my command, in the month of \_\_\_\_\_ amounting to \_\_\_\_\_ complete rations.

Signed \_\_\_\_\_

NOTE.—This voucher embraces the returns of the month and is a monthly abstract of issues.

Abstract of Provision received in Deposit at  
under the Contract of Elbert Anderson, Jun.

on account of the United States by

By order of Brig. Gen. G. IZARD.

A DATES.	
1813	
Barrels of Pork.	Stored With
Barre's of Beef.	
Barrels of sup Flour.	
Barrels Rye Flour.	
Casks of Whiskey.	
No. of Gallons.	
Boxes of Soap.	
Pounds of Soap.	
Boxes of Candles.	
Pounds of Candles.	
Casks of Vinegar.	
Gallons of Vinegar.	
Bushels of Salt.	
	REMARKS.

62

I Certify That I have examined and received in good merchantable order of Elbert Anderson, Jun.  
Barrels of Pork,  
Flour,  
lons of Whiskey.

Gallons Vinegar. Having Signed Triplicates.  
Pounds Soap,  
Bread,  
Barrels of Beef,  
Pounds Candles, and  
Gall.

Signed

W. S. Store Keeper.



# ABSTRACT of Provisions received from

Troops United States, under the regulation of the War Department, Agent for the Contractor, **ELBERT ANDERSON, Jun.** out of the Public Magazines, by to be issued to the

Marks.	Dates of Delivery.	B.
	Bbbs. of Pork	
	Bbbs. of Beef	
	Bbbs. of Flour	
	Casks of Whiskey.	
	No. of Gallons	
	Boxes of Soap	
	Lbs. of Soap	
	Boxes of Candles	
	Lbs. of Candles	
	Casks of Vinegar	
	Gals. of Vinegar	
	Bushels of Salt	
	From what Store Received.	
	REMARKS.	
Total.		
12 1-2 per cent. deducted.		
Net amount.		

I acknowledge the Receipt of

of Flour

of Beef,

of Pork, of

lbs. of Soap,

Gallons of Whiskey,

of Bread,

Tractor stands accountable, Gallons of Vinegar,

lbs. Candles,

having signed triplicates.

of Salt, for which the Con-

\* The amount of provision is cast into a money account—12 1-2 per cent deducted, and 1 cent per ration allowed on the remaining balance; here, by the regulation of the Dep't, it becomes a charge in dollars and cents, and not in kind as is obtained by the military commissariat.

No.

Order to deliver to  
for transportation to  
Barrels of  
Casks of  
Boxes of

The Public Store-keeper  
will deliver to  
for transportation to

Barrels of  
Casks of  
Boxes of

Amount advanced on  
this order, *Dolls.*

in merchantable order, and make him accountable for the delivery in good  
order, to the assistant Store-keeper at

10  
5

\* These forms and receipts of transportation originated with the Contractor. They contain all the receipts of the Teamsters, for the articles in *kind by weight, number and measure*, and the money paid for the said transportation.—The certificate of the receiving and delivering Store Keepers, also appear on the vouchers. Thus the entire accountability is kept between all the agents. Although the orders of the Dep't. says when the Contractor executes these duties of Q. M. it is to be done at the *public expense*, the Contractor has in no instance claimed pecuniary reward for those services. On Lake Ontario in 1812 and '13 the store keeping dept. was deficient and not organized—the accountants dep't. charged the various deposits in mass to the Contractor at the *original contract prices*, making him liable for all natural decay, leakage and wastage, and underwriter for these deposits without allowance for any loss in transit, although the place of issue was Albany for the deposit, and Niagara and Sackett's Harbor for the subsequent place of issue.

Abstracts of Receipts received of      for deposit provision delivered to

Store-keeper at Transported by

DATES.

REMARKS.

No. of Receipts

Barrels of 1 H

Casks of

## Barrels of Pork

## Barrels of Beet

### Csks. of Whiskey

## Gals. of Whiskey

Boxes of

Pounds of

## Boxes of

Pounds of

Casks of

Gallons of

C.  
qrs.

Flour  
Bread  
Pork  
Beef  
Whiskey  
Soap  
Candles  
Vinegar

I certify that I have received from  
Store-keeper at  
unable to the above Abstract, containing

confor-

Dr. The United States

Dolls. &amp; Cie.

For Transportation of Cr.

as specified in this Abstract at  
Received of *Elbert Anderson, Jr.*

~~~~~

*War Department, May 16th, 1814.*

Sir—

You will take measures to have the provisions on Lake Champlain inspected, and the quantity ascertained to be on hand on the first of June next. You will cause returns of the same to be made to this Department, and receipts given by the store-keepers to the present contractor. These returns and receipts will designate by *whom, when and where*, the provisions have been deposited.

You will also direct the necessary arrangements to be made to secure the regular issues from the same, until the new contractor, or other authorised agent or agents, arrive to take possession of such balance as may remain on hand.

I have the honor to be, &c.

JOHN ARMSTRONG.

Maj. Gen. Brown, and to }  
Maj. Gen. Izard. }

*Commanding on Lake Ontario and Champlain.*

(CIRCULAR.)

*Washington, May 16th, 1814.*

SIR,

On the first day of June next my contract for the supply of rations expires by its own limitation: up to that day you will cause all your abstracts of issues to be completed and signed by the seignor officer at the post, and you will deliver in deposit all the provisions you have belonging to the contractor, to such Store-keeper or Deputy Quarter-Master as may be on the post, and shall be *duly authorized* by the commanding General to take charge of the same, and give you triplicate vouchers as per Blank A. for such deposits. If you have on the 1st of June public provision from a previous deposit, or any other kind received by you for issue, all such unconsumed provision you will likewise deliver over to the authorized agent and take duplicate receipts specifying by whom

and where received ; those vouchers will constitute the contractor's credit with the War Department, and will be transmitted without delay to my agent at Albany.

You have been required to forward a copy of all receipts you may have given for *public provision received by you or your* Deputies for issue—particularly specifying from whom, and what deposit those supplies have been received. It is charged upon you to comply with this injunction, so as to enable me to close up my accounts and *give Government credit for such provision* as have been received for issue.

As your agency will close on the first day of June next, you are directed to make out an account current in the form that has been prescribed to you, and transmit the same to my agent at Albany, with your signature attached to the same. You need not be reminded that the most accurate vouchers are required for expenditures appertaining to public accounts, duly certified by senior officers, and that like vouchers will scrupulously be expected in your purchase and expenditures in behalf of your principal.

With great respect, &c.

ELBERT ANDERSON,  
Army Contractor.

James Thorne, Esquire, and others.

*Washington, May 25th, 1814.*

Sir—

I have the honor to inform you that I have voluntarily repaired to this city with a full expectation that my accounts for current issues and deposits under my contract, dated November 7th 1811, and which expired on the 31st of May 1813, would have been duly audited, and an official report made on the balance of that contract. I have now remained in this city three weeks, anxiously expecting a report from your department on the balance of that contract, as well as a report on the vouchers rendered to your office up to the 28th of February 1814, for supplies under my contract, dated 25th February. 1813.



I shall repair as soon as possible to New-York, and shall be pleased to receive such instructions from you as will enable me to close with satisfaction all my accounts, and as soon as the present contract terminates, I shall lose no time in furnishing your department an account current, in *such form and manner*, as shall easily be prescribed.

With respect, I remain your most Obt. Servt.

ELBERT ANDERSON.

Wm. Simmons Esq. Accountant's Dept.

(True copy)

Peter Hagner, Auditor.

*Sackett Harbor, July, 1814.*

SIR. To enable me to provide for the *immediate subsistence* of the Army of the United States, in this district. I shall need the whole stock of provisions purchased by the *late Contractor, and on hand in this district on the 1st. of June.* I therefore, *oblige myself to receive the same wherever it may have been deposited, at my contract prices of the several component parts of rations, notwithstanding there may be an undue proportion of some articles, and a deficiency of others.* The commanding General of Posts or the Officers of the Qr. Mr. Genl's. department, I presume have authority, to deliver over the articles to my authorised Agents, on their giving the necessary vouchers, which I shall instruct them to do.

*I conceive myself entitled to all the benefits of this arrangement, as they are secured to me by my contract, and this will also preclude all controversy which might possibly arise respecting the propriety of some of Mr. Anderson's deposits.\**

I am respectfully, Sir, your ob't. servant,

WM. D. CHEEVER.

To William Simmons, Esq. Accountant War Dep't.

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\* This is given as a copy of the letter called for from the files of the office; it was written by the late Wm. D. Cheever, without the knowledge or concurrence of E. Anderson: it clearly shows the supplies in equal or unequal parts were conducive to the public interest and Cheever's safety

*New-York, Sept. 24, 1814.*

Sir—

I have the honor to forward you three General Abstracts of provisions, deposited by Government, during the current year of my contract, dated 25th Feb 1813, in which I have charged and credited the Government, with the amount delivered, and afterwards received back for issue by my agent, viz :

Schedule no 1 for Lake Ontario vouchers No. 1 to 24

Do 2 " Champlain 1 12

Do 3 " N. York & Sag Harbor 1 1

I have had those vouchers for transmission for some time back, but the difficulties that occurred at Washington\* deterred me from forwarding them, I pray you will enter on the examination as soon as possible, and at this critical period it will be pleasing to receive from your office a acknowledgment of papers so important to the adjustment of my accounts.

With sentiments of respect,

I remain, &c.

ELBERT ANDERSON.

Hon. Richard Cutts,  
Superintendent Gen. public supplies,  
Washington city.

[ANSWER TO THE ABOVE.†]

*Sup't. Gen. office, Washington City, Oct. 14, 1814*

Sir—The several abstracts of provisions forwarded by you to this office, have been examined; the persons with whom deposits have been made, will be held accountable for the same to this office.

I am respectfully, sir,

Your most ob't. serv't.

RICHARD CUTTS,

*Sup. Gen. Mil. Supplies*

Elbert Anderson, Esq. N. York.

\* The attack on - resulting in the destruction of the War Office in latter part of August

† September 26th, 1814. Acknowledges the receipt, &c.

*Correspondence and Documents on the claim of  
Interest, &c.*

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*Albany, March 22, 1814.*

SIR,

In consequence of the refusal of the draft for \$75,000, the Bank calls on me to make good that sum, which I must do by a discount, and pay them interest from the time it was passed to my credit, which was on the 26th February. The interest already due amounts to nearly 500 dollars, which sum is lost unless government will pay, which I think is a just charge to them, as well as what will accrue on said draft until paid. Tomorrow being discount day, I must renew the note for \$60,000, payable on the 26th inst. The discount I think justly chargeable to government; the above two sums will make my note appear at the Bank to the enormous sum of \$147,500, which will preclude my claim for any further discount at present. My balance in bank this day \$20,129, making your check good, will leave \$10,129, I have drafts and acceptances to pay this week \$10,534, shall be under the necessity to make a draft on you for the \$10,000 back again. I presume you will have no difficulty in procuring a loan from one of your Banks for a short time to meet my drafts.

Yours, &c.

ISAIAH TOWNSEND.

Elbert Anderson, Esq.

*New-York, March 31, 1814.*

SIR,

I am induced to write you in consequence of advices from Albany, that the draft in favor of I. Townsend, Esq. for \$87,500 has not yet been answered, and that the payment of my draft in favor of J. Burrill, Esq. for \$150,000 is not yet come on. To show you in one view the amount I now stand indebted the *State Bank at Al-*

*barely alone*, in behalf of Government supplies exclusively, I send you the original letter of I. Townsend, of 22d inst. since which I have received from him a letter of 29th, in which he says, additional drafts have been presented to him for payment on behalf of purchases, &c. for 27,000 dollars, and not having the means wherewith to receive the funds, he has been compelled to suspend payment. Thus, sir, do I stand indebted for disbursements in behalf of government rising 175,000 dollars.

My account for December and January, 1814, is now completed, and shall be sent on in a few days ; for the two months they amount to 191,440. 20 ; and by yesterday's steam-boat I have received abstracts for the month of February, (*exclusively of the Army at Plattsburg*) that will make the issue of February amount to 87,500, making together 278,940.20.

By this statement of that Quarter ending 23th February, was predicated as pre-umed, amounting to 288,170 dollars, which was 95,000 dollars less than the preceding quarter ; yet for an actual disbursement of 278,940 dollars I have drawn only 150,000 dollars.

One month of the last quarter of my contract expires this day, and with the assurance before me of the preceding quarter exceeding 278,940 dollars. Yet I have foreborn to draw on your department for fear at this time of embarrassing the finances of Government, but in the course of a few days I shall be under the necessity of drawing at a few days sight for necessary funds to defray the expenses of the current quarter.

Your's, &c.

ELBERT ANDERSON.

Hon. John Armstrong, Sec'y War.

*New York, April 20, 1814.*

SIR,

I have this day forwarded to the Accountant's department my account of current issues for the month of

|                                       |         |                |
|---------------------------------------|---------|----------------|
| February, 1814, as per voucher (A.)   |         |                |
| No. 1 to 72.                          |         | 86 159 13 2    |
| Militia                               | Do (B.) |                |
| No. 1 to 6.                           |         | 20 664 67      |
| Quarter-Master Department             |         | 2 00           |
|                                       |         | <hr/>          |
| Amount to                             |         | \$106 225 85 2 |
| The Dec. & Jan. amount forward- }     |         |                |
| ed on 1st inst. amounted to }         |         | 191 440 21 5   |
|                                       |         | <hr/>          |
| Making a total for the Quarter end- } |         |                |
| ing 28th of February }                |         | \$297 666 6 7  |

In two or three days I shall visit the seat of government, and shall have the honor to confer with you in person on the adjustment of my accounts.

With great respect, I remain your ob't serv't,

ELBERT ANDERSON.

Hon. John Armstrong, Sec'y War.

*True copy.—C. Vandercanter.*

*New-York. Oct. 15, 1814.*

Sir—I have the honor to enclose you the additional vouchers to complete the account of 4th quarter, dated 25th Feb. 1813.

Amount \$169,848,49,8 and the additional credit to the U. States for provision received back for issue of 25.550.05.5 the receipt of which you will do me the favor to acknowledge, and cause the same to be placed under examination.

I have likewise the honor to enclose you a general account current for the contract dated 25th Feb. 1813, in which it is found a balance due me of \$263,004,53,2 ; there are some vouchers of losses on the Niagara yet to be furnished, and other provisions on hand 1st June, of those deposits of which I have given credit to the U. States, in gross they will constitute a further claim on the U. States, but being anxious to have the official exami-



nation, and a report on my accounts with a view to receive the balance, and discharge those demands which some of our banks have loaned to me. I have lost no time in making up those accounts, the balance of which I feel confident the justice and good faith of the government will promptly liquidate. I shall therefore await your answer with considerable anxiety, and hold myself in readiness to repair to Washington, to give your department every explanation that may personally be required.

I have the honor, &c.

ELBERT ANDERSON.

Tobias Lear, Esq.

Accountant War Department.

*New-York, October 17, 1814,*

SIR,—Enclosed you will receive the Quarter-Master General's receipt for the provisions placed on board of boats in the descent down the St. Lawrence, 1813. As this was made only a charge in kind of my account of deposits for Lake Ontario, forwarded 22d August, 1813 it was omitted to be sent to you. The receipt given to the Quarter-Master for this provision is likewise a nominal charge against me; the amount lost is the real difference, and is the only amount carried out against the United States.

In the balance as stated by me against the U. States in general account current, viz. 263,004.53 2 dollars there is 16,843.75 dollars under the head of contingencies, a part of this arises from the augmented price of the ration and the other in violation of contract and damage done me by the interference of late major-general Wade Hampton. The correspondence on this subject is on the files of the War Office. In making up my accounts I have studied to conform to the rules and regulations of the accountant's department; my agents may, in some instances, have departed from the rules laid down for their government, but I trust in those cases, if any, the officers of government have been to blame; some ignorant

of their duty, and others pleading haste necessary to a march, or change of station.

I have the consolation to believe, that in five and a half years' service under three different heads of the War department, I have discharged the trust reposed in me with zeal and fidelity. In expressing a willingness to repair to Washington with such duplicate papers and other vouchers as I possess, and to give personal explanation (if any are wanting) I consult the mutual satisfaction that may be derived, and the convenience of your time to give a final decision to my accounts, for myself, I shall not regret the loss of time, nor the expense it will give me, but will cheerfully repair to your office by the return of mail, provided it will be convenient for you to give the examination required.

With consideration of personal respect, I have the honor to remain your ob't servant,

ELBERT ANDERSON.

Hon. Tobias Lear, Acc't War Dep't.

A true copy of the original on file in this office.

*Peter Hagner, Auditor.*

*New-York, Oct. 26, 1814.*

SIR,—My contract for the supply of rations to the troops of the United States (within the state of New-York and the Canadas) having expired by its own limitation on the 31st May last, I have lost no time to bring up my accounts for supplies under that contract, and have furnished the accountant of the war department with vouchers and account current, in which it appears a balance of \$263,004 53 2 is claimed by me. It is with considerable regret I find that the pressure of business in the accountant's department is so great at present as to exclude the possibility of his reporting on the state of my claims so as I could come in possession of the whole balance due me, which would have enabled me to discharge the demands which have grown out of that con-

tract, and likewise to pay the heavy accommodations now due to the Banks of Albany for the loans had of them for those supplies which I hope were providentially laid up and gone to the subsistence of the army, until this late period of the campaign.

The Superintendent-General of public supplies, has taken up the examination of all my deposit abstracts, and has advised me that these vouchers have been duly examined, and the persons who have receipted for the provisions are held accountable.

As soon as the present contractor entered on the duties of his office, he had the foresight to see that he could not supply other than from those deposits which had been made by his predecessor : with this view the Honorable Secretary will perceive the necessity of being provided with the amount of my claim, but knowing (as I have known) the low state of the public treasury and the great increasing wants of the Government, I have forborne to draw on your department, but must now discharge the obligations due to my creditors, as the period of payment was only protracted until my accounts could be condensed and forwarded to the Government.

I therefore have the honor to draw on your department for One Hundred and Fifty Thousand Dollars, in favor of W. Fish, Esq. Cashier, at sight, and Fifty Thousand dollars at 15 days after date in favor of W. Fish.— One of these drafts I ought undoubtedly to receive in cash, as Treasury Notes are now below par three to four per cent ; but if no money can be received, I must content myself with the alternative of Treasury Notes, and suffer the loss. If in discharging my duties as contractor, I have been instrumentally serviceable, I shall rejoice, and it will be my best consolation to receive your approbation in what has been done, or in receiving your future commands in any thing that may yet be done, to serve the Government in those trying times that call for the exertions of all. I am respectfully, &c.

ELBERT ANDERSON.

Hon. Jas. Monroe, Sec'y War.

*War Department, Oct. 31, 1814.*

SIR,—Your letters of the 26th and 27th instant have been received.

As soon as your accounts are acted upon and settled by the accountant of this Department, in the accomplishment of which, no time will be lost, any balance which may be due you shall be *promptly paid*.

It is impossible to accept or pay your drafts until a settlement of your accounts is made.

I have the honor to be respectfully, sir, your obedient servant,

JAMES MONROE.

Mr. Elbert Anderson, late Contractor, N. Y.

*New-York, 19 Nov. 1814.*

SIR,

I received your letter of the 31st ult. in due course. From the tenor of that letter, I indulged the hope that my accounts in your office would have been settled before the 15th inst, when my draft on you for 50,000 dollars became due, and it consequently honored, or that they would have been in such state of forwardness as to have justified your payment of it, especially as it is not a fifth part due me. In proportion as I have indulged this hope, I have been chagrined by the mail of yesterday bringing me a notice of protest. In this painful situation, I must beg leave to say, that although I have entire reliance on the faithful fulfilment by the Government of its contracts with me,\* I may not be able to infuse the same spirit into all those who are my creditors, and who have given me that credit in consequence of my previous punctuality. Notwithstanding the freedom with which I thus express my feelings on this subject, I beg

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\* United States' stock on 5th November, 1814, was 78 per cent. Had the Government borrowed the amount as good faith, and the usages and terms of the contract required, they would have paid 20 per cent premium, or 100 stock for 80; the loss to the United States in the payment of these drafts would have been 40,000 dollars, and the interest on this premium as well as the original 200,000 UNTIL FINALLY PAID.

leave to assure you that I fully rely on your promise, that no time shall be lost in the settlement of my accounts, and that the balance will be punctually paid. And if I could further be informed when that time is likely to arrive, it would greatly oblige me.

I have the honor, &c.

EDWARD MITCHELL,

Attorney for Elbert Anderson.

Hon. Jas. Munroe, Sec'y War.

*Department of War, Accountant's }  
Office, March 10th, 1815. }*

SIR,

Your account for supplies furnished under contract dated 7th Nov. 1811, has this day been adjusted, and a balance found due thereon to the United States of one thousand eight hundred and thirteen dollars, and thirty-one cents, which sum will be carried to your debit in account under contract of 25th Feb. 1813.

The aforementioned balance differs from your statement in a sum of \$27,940 63-100, which you will find fully explained in a statement of differences herein closed for your government.

I am with respect, sir, your ob't serv't,

TOBIAS LEAR.

Elbert Anderson, Esq.

*Department of War, Accountant's }  
Office, March 14, 1815. }*

Sir—Your account for supplies furnished under contract, dated 25th February, 1813, has this day been adjusted, and a balance found due you thereon of *one hundred and eighty-one thousand, two hundred and forty-three dollars, and fifty-seven cents*, which sum has accordingly been reported to the Secretary of War for payment.

The aforementioned balance differs from your statement in a sum of \$84,865 45-100, which is fully explain-



ed in a statement of differences hereinlosed for your government.

I am with respect, sir, your ob't serv't,

TOBIAS LEAR.

Elbert Anderson, Esq.

EXTRACT.

*New-York, March 30, 1815.*

SIR,—Conformable to your request, I now have the honor to enclose you a copy of a pledge made by the late Hon. James Monroe, Secretary of War, for the prompt payment of the balance that might be due me.

The balance now claimed is, as I before stated, for supplies furnished previous to 1st of June 1814. I therefore asked of the justice of the United States to have paid me, if in treasury notes, to bear *even date with the debt contracted*, or at least, to bear date the *27th October last, the time in which I had previously furnished all my vouchers* and drew for 150,000 and 50,000 dollars, neither of which was paid, but protested as shewn to you by W. Fish, Esq. Cash'r. copies of the said protests, have been forwarded in your absence, to Washington.

As a public creditor, who is conscious of having rendered "some service to the state," I shall never consent, nor do I think you wish it, to have my claims placed in adjustment on terms different from the most favored.

With great respect,

I have the honor to remain

Your ob'dt servant.

Hon. A. J. Dallas, Sec. of War.

*Washington City.*

*Georgetown, Nov. 2d, 1814.*

Sir—A bill drawn by yourself on James Munroe, Secretary of War, for 150,000 dollars, dated 27th October 1814 at sight, and for which you are liable, has been protested at the request of the President, Directors, & Co.

of the Bank of Columbia for non payment, and will be returned to them.

Your's, &c.

SAML. CRUSE, for  
W. SMITH, Not. Pub.

The bill for 50,000 dollars at 15 days date, was likewise protested in due form ; copies and certificates of protest forwarded by W. Fish, Esq. cashier.

*(Extract.)*

*New York, April 12, 1815.*

SIR,

I now have the honor to advise you that W. Fish, Esq. Cashier, will receive the amount in Treasury notes at the par value, fundable at 7 per cent, agreeable to the 8th section of the law passed 24th Feb. 1815, for the issue of 25,000,000 for the benefit of the public creditor ; under this section of the law I must consent for the *present* to receive payment : But in receiving Treasury notes in payment, it is not to be understood that I am *debarred* from a just and equitable claim for interest that has accrued for the advances made to government, for the subsistence of armies of the United States.

I have the honor to remain your ob't serv't,

ELBERT ANDERSON.

Hon. A. J. Dallas.

*(Extract.)*

*New-York, May 15, 1815.*

SIR,

I have a well grounded hope that you will now fulfil the pledge made by the Hon. James Monroe, in his letter of 31st Oct. 1814, and extinguish this claim, by giving 6 *per cent stock at your offer of 95 of debt for 100 of stock*, or give me the amount in Treasury notes,

authorized to be issued by the law of 24th Feb.\* to all such creditors who have given the U. States supplies, and are willing to receive Treasury notes at their par value. Should you decline making arrangements founded on a basis so fair, and advantageous to the Government,† you will do me the favor to state in your reply the ground on which I may hope for a settlement.

With sentiments of great respect I remain your obedient servant,

E. ANDERSON.

Hon. A. J. Dallas.

*Received by Mr. Anderson at New-York, written by  
Hon. Sec. A. J. Dallas.*

MEMORANDUM.

It would give me pleasure to pay Mr. Anderson's claim, as it is now settled by the Accountant; and the difficulty in respect to the payment, does not arise from the want of funds at the treasury, but from the want of an adequate appropriation. The Secretary of War pressed upon the Committee of Congress a larger appropriation before the adjournment, but he could not obtain it.

My letters and overtures, respecting the payment of Mr. Anderson's claim, are all correct. When they were written, I had not entered the War Office, and, certainly, I was unaware of the state of the Army appropriations. Hence, when I said that the claim could be paid, or funded at par, or at the rate of 95 per cent, I could only mean that it should be legally paid or funded, as far as there was an appropriation to authorize it.

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\* The law of 24th Feb. authorized the payment to such creditors of the United States as were willing to receive the same in *Treasury* notes, bearing interest of *seven per cent.* or fundable. It will be seen that the Hon. Secretary after receipt of this letter *discovered* that the appropriation for subsistence was deficient.

† The 6 per cent stock of the United States on the closing with the Hon. Secretary of the Treasury's offer, was current at N. York for BANK PAPER, at 89 1-2 per cent; the United States being bound to pay this debt in specie the advantage was apparently in their favor \$9,968 81 1-2 in PAPER. (See letter, page 115.)

But the Act of Congress, respecting the issue of treasury notes, has been misunderstood. It does not authorize the payment of claims in those notes, beyond the amount of actual appropriations. It only authorizes payment in those notes, where the debt is ascertained and an appropriation for paying the debt has been made by law. Mr. Anderson's debt is ascertained; and could be paid in treasury notes, or it might be received in subscription to the loan; but for the single constitutional reason, there is no law that appropriates money to pay it; the general appropriation being exhausted.

An effort is making, in a lawful manner, to enrich the appropriations; and the Department may be able, not only to subsist the Army for the current year, but to pay off, at least, a part of the arrearages. On this ground however, nothing is meant to be promised in Mr. Anderson's case, more than in numerous other cases, greater in amount, if not greater in hardship.

6th, June 1815.

*War Department, June 20th, 1815.*

Sir—

On the 15th of March last, a warrant issued in your favor, agreeably to the certificate of the accountant of this Department, for *one hundred and eighty-one thousand two hundred and forty-three dollars and 37-100*, the balance found to be due to you on your late contract, the payment of which has only been delayed by the want of funds to meet this item of Army expenditures. Whenever an appropriation shall be made by Congress for the subsistence of the Army, and which no doubt will be one of the first acts of the approaching season, your draft in favor of W. Fish for the above amount, will be duly honored by this Department.

I am, sir, very respectfully,  
Your obd't servant,

A. J. DALLAS.

Elbert Anderson, Esq.—*Late Army Contractor, N. Y.*

*Department of War, 10 July, 1815.*

SIR,

It appears from a report made by the accountant of this department, dated the 27th of June, that there is due to Elbert Anderson the sum of fifty-six thousand seven hundred and fifty-six dollars and 42-100 ; forty thousand dollars of which can immediately be paid by a draft on Baltimore,\* and the residue will be paid whenever Congress shall make the necessary appropriation.

I have the honor to be very respectfully, your obedient servant,

GEO. GRAHAM.

E. Anderson, Esq. New-York.

*Department of War, 12th July, 1815.*

Sir—

It appears from a report made to this department by Colonel Lear, bearing date the 10th of July 1815, that there is due you seven thousand three hundred and eighty nine dollars and thirty four cents, on account of your contract, which will be paid so soon as Congress shall make the necessary appropriations.

I have the honor to be,

With great respect,

Your obedient,

GEO. GRAHAM,

Elbert Anderson, Esq.—N. York.

*(Extract.)*

*Washington, 11th July, 1815.*

DEAR SIR,

The balances due you on the several settlements have been reported in the usual manner ; but as the appropriation for the subsistence of the army is nearly exhausted, I don't think it will be practicable for you to

\* Baltimore paper was 5 3-4 per cent below the bank paper of New-York, and 12 below specie on the 10th July, 1815.



obtain full payment of your debt until new appropriations shall have been made by Congress. But if full payment shall not be made before this time, I think *there is no doubt but Congress will provide for the indemnification of the creditor* and especially where essential services have been faithfully rendered.

With great respect and esteem, I am, dear sir, your most obedient servant,

E. Anderson, Esq.

TOBIAS LEAR.

(*Extract from the Protocol.*)

*New-York, August 22, 1815.*

SIR,—In the beginning of the present month I had the honor to address you on the subject which occupied our conversation when last in Philadelphia.

Conformable to your wish I forbore “to embarrass your mind,” but proceeded to New-York in expectation of hearing from you, which I understood would be in a week or ten days from that time. Heretofore my faith and patience has sustained me in the disappointment I have so often received from the Department since you have had the honor to preside.

I am aware of the multiplicity of your duties, and your great exertions to relieve the finances of the country, but sir, may I not reasonably ask if no attention is due to services long and faithfully performed, as those which myself and colleagues have rendered the Government in the most critical times.

I therefore again have the honor to solicit from you an early reply whether or not I can be paid in the current money of N. York or in Treasury notes at par, any proportion of the great balance now due, as may be within your power as Secretary of the Treasury to grant.

I pray you to consider the freedom in which I address you, as not incompatible with the respect I have for you personally.

I have the honor to remain your fellow-citizen, &c.

ELBERT ANDERSON.

Hon. A. J. Dallas.

*Treasury Department, April 8th, 1845.*

Sir—Having refused offers at 92 in treasury notes and cash for 100 dollars in stock, I can only inform you, as I have done others, that I am ready to receive proposals for subscribing to the 12 million loan, at the rate of 100 dollars in stock for 95 in the payment which you propose.\*

I am, very respectfully, sir, your ob't serv't,

A. J. DALLAS.

E. Anderson, Esq. N. York.

*Treasury Department, August 23, 1815.*

Sir—Your letters have been received ; you have been told explicitly, that the appropriations for the War Department are not sufficient to cover all the demands upon it, but that as soon as the necessary arrangements can be made, a part of your demand will be paid.

I am very respectfully, Sir, your ob't serv't,

A. J. DALLAS.

Mr. Elbert Anderson, New-York.

*Treasury Department, August 9, 1823.*

I certify that the two letters on the preceding page, addressed to Elbert Anderson, Esq. are correct transcripts from the records of this office.

WM. N. CRAWFORD.

(*Extract.*)

*New-York, Jan. 15, 1816.*

Sir—I am induced to address you in consequence of a considerable delay which has taken place in the prompt payment of my draft in favor of W. Fish, Esq. for the balance reported in my favor by the accountant of the War Department on the 14th March last, the interest of this balance since it was reported is now nearly ten thousand dollars ; my contract embraced a covenant to pay the Government six per cent on all balances found due them on settlement. Will not a just and necessary principle

\* 1815. 10th April, U. S. bank stock sold at 87 1-4 per cent. 16th May, at 89 1-2 per cent for paper of N. York banks.

of reciprocity call on Congress to make the rule alike in favor of the public creditor.\*

I remain your obedient servant,

ELBERT ANDERSON.

Hon. A. J. Dallas.

*Loans made to Isaiah Townsend, by the New-York State Bank.*

|                                                                                                     | <i>Amount.</i> | <i>Discount.</i> |
|-----------------------------------------------------------------------------------------------------|----------------|------------------|
| 1813, March 31,                                                                                     | \$10,000       | \$56 66          |
| “ June 23,                                                                                          | 10,000         | 56 66            |
| “ July 7,                                                                                           | 10,000         | 108 32           |
| “ “ 21,                                                                                             | 10,000         | 106 66           |
| “ “ 28,                                                                                             | 20,000         | 210              |
| August 4,                                                                                           | 20,000         | 213 32           |
| “ 11,                                                                                               | 20,000         | 152 68           |
| “ 25,                                                                                               | 20,000         | 113 32           |
| 1814, February 23,                                                                                  | 60,000         | 330              |
| “ May 4,                                                                                            | 25,000         | 125              |
| “ 18,                                                                                               | 50,000         | 300              |
| “ June 15,                                                                                          | 50,000         | 533 30           |
| “ August 17,                                                                                        | 50,000         | 533 30           |
| “ October 19,                                                                                       | 50,000         | 525              |
| “ December 21,                                                                                      | 50,000         | 525              |
| 1815, February 22,                                                                                  | 50,000         | 525              |
| “ April 19,                                                                                         | 50,000         | 533 30           |
| 1816, February 13, interest paid on the<br>last note from 21st June 1815, to 8th<br>February, 1816, | } \$1,941 70   |                  |

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\$6,889 22

*Loans made to John Townsend, by the New-York State Bank.*

|              |          |         |
|--------------|----------|---------|
| 1813, May 5, | \$20,000 | \$110   |
| “ Sept. 29,  | 40,000   | 420     |
| “ Oct. 6,    | 40,000   | 420 950 |

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7,839 22

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\* It will be seen by the 10th article of the Contract, that if any balance is due the government, the interest RETROSPECTS BACK to the time the contract expired, although the debt should subsequently be ascertained.

*New-York State Bank, Aug. 2, 1823.*

I certify that the preceding is an account of sundry loans made to Isaiah Townsend and John Townsend by the New-York State Bank, at the periods above specified, with the discount and interest paid thereon; which loans were then represented by the borrowers, and were understood by the Bank to be for the purpose of carrying into effect a contract made by Elbert Anderson (in behalf of himself and his associates) with the Secretary of war, for supplying the United States army with provisions.

JOHN W. YATES,  
Cashier of the New-York State Bank.

*Treasury Department, Regr's Office, Oct. 9, 1823.*

SIR,

In compliance with your request of the 6th instant, I have to refer you to the following statement of the manner in which the several drafts on the Secretary of War, therein referred to, were paid; whether the Banks upon which the Treasury drew, in payment of your bills, did, at the time redeem their notes in specie, cannot be ascertained from the records of this office; neither do they exhibit any information as to the relative value of Treasury notes in other parts of the United States; those issued at the Treasury were considered as at par when issued.

I am very respectfully, sir, your ob't serv't,  
MICH'L NOURSE, for the Reg'r.

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NOTE. This certificate was exhibited to show that the joint capital of the contractor and his associates was not sufficient to make the necessary advances

The demand of interest grows out of an ascertained debt, and accounts furnished by the creditor; and interest can be claimed by usage or without the usage of the War Department, and it was so stipulated by my proposals, I was to possess the necessary funds; these funds had always been given three months in advance, until the fiscal concerns of the United States in 1814 became deranged. The interest from the time the party had a right to draw (three months in advance) is recognized in the decision of Secretary Crawford, of 27th Jan. 1817.

| <i>In whose favor</i>     | <i>amount</i>     | <i>when paid</i>     | <i>how paid</i>                        |
|---------------------------|-------------------|----------------------|----------------------------------------|
| 1814 Feb. 24, I. Townsend | 87,500            | 25 Mar. 1814         | By bank of Columbia (in specie.)       |
| Mar. 1, J. Burral,        | 150,000           | 4 April "            | bank of America.                       |
| Apr. 4, I. Townsend,      | 75,000            | 18 " "               | Farm's. & Mech's. bank, Phil'a.        |
| " " W. Fish,              | 75,000            | 25 " "               | Mechanic's bank, New-York.             |
| June 9, I. Townsend,      | 100,000           | 29 June, \$37,500    | N. Y. State Bank, Albany.              |
|                           |                   | 62,500               | Mechanic's Bank, at N. York.           |
| 1815 Sept.                | 56,756.42         | 1 Sep. 1815 \$56,700 | In treas. notes issued at the treasury |
|                           |                   | 56,42                | By Manhattan Co. N. York.              |
| Mar. 15,                  | 181,243.57        | 11 Jan. 1816 138,500 | In treas. notes issued at the treasury |
| 1816 Jan. 5               | 7,389.34          |                      | 132.91 By Mechanic's Bank, N. York.    |
|                           | <u>188,632.91</u> |                      |                                        |



We hereby certify that upon an examination of our books, it appears that U. S. treasury notes in this market, were

On fourth of April in the year one thousand eight hundred and fourteen at par, payable in specie.

On the eighteenth of April, one thousand eight hundred and fourteen at par, payable in specie.

On the twenty-fifth of April, one thousand eight hundred and fourteen, at ninety-nine and one half per cent, payable in specie.

On the twenty-ninth June, one thousand eight hundred and fourteen, at ninety-nine and one half per cent, payable in specie.

On the first September, one thousand eight hundred and fifteen, at eighty-nine per cent, payable in specie.

And on the eleventh day of January, one thousand eight hundred and sixteen, at ninety-one and forty-three hundredths per cent, payable in specie.

*New-York, 10th November, 1823.*

PRIME, WARD & SANDS.  
NEVINS & TOWNSEND.

*City and County of New-York, ss.*—On the tenth day of November, one thousand eight hundred and twenty-three, personally appeared before me, Joseph Sands, known to me to be one of the firm of Prime, Ward and Sands of this city, Exchange Brokers, and acknowledged that he had executed the within instrument in the name of said Firm, and for the purposes therein mentioned.

O. H. HICKS, *Commissioner.*

*City and County of New-York, ss.*—On the tenth day of November, one thousand eight hundred and twenty-three, personally appeared before me, Russell H. Nevins, known to me to be one of the Firm of Nevins & Townsend, of this city, Exchange Brokers, and acknowledged that he had executed the within instrument in the name of said Firm, and for the purposes therein mentioned.

O. H. HICKS, *Commissioner.*

Washington July 11th 1815

SIR,

I recollect receiving the letter addressed to me by you while I was in the Department of War, bearing date on the 4th January last, and am satisfied that I assured you that you should sustain no loss which I could prevent—The troops in the Eastern States were in great distress I was aware of the depreciation of Treasury notes; it was indispensable to supply the troops, and it seemed to be just that, as the government could not furnish you with a paper which circulated at par in that quarter, you ought to be indemnified against the loss arising from the depreciation.\* I considered your case, at the time, as rendered peculiar by the situation of the troops, and the exigency of the public service in the quarter to which your contract applied.

I am, sir, with great respect,

Your very ob'dt servant,

Signed, JAMES MONROE.

JAMES BYERS, Esq.

True copy.—Peter Hagner, auditor.

The Accountant in settling the accounts of Contractors for 1814-15, will allow all claims supported by evidence of loss sustained by payment of interest or damages, in consequence of the department being unable to make the necessary advances.

Also all losses sustained upon the issue of rations, not requirable by the contract.

All claims arising from loss sustained by requisitions not authorized by the contract.

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\* This letter was applied to the claim of James Byers; the principle however is general, and shows the just and enlightened views of the writer. The case of the present claimant was stronger, and required the peculiar protection of the U. States—his *state and district* was the actual seat of war; both Southern and Northern Frontiers were menaced and invaded by a vindictive foe, and the constant and unexpected calls for the Militia had to be met by immediate supplies.

The Contractors will be required to account for all premiums received upon the sale of bills negotiated by them on the Government.

(Signed)

W. H. CRAWFORD.

*Received by the Accountant 27th January, 1816,  
from the Secretary of War.*

True copy, Peter Hagner, Aud.

*(Extracts from Public Documents.)*

The decisions of the War Department, so called, were written instructions directed to the Accountant of the War Department, to govern him in the settlement of Contractor's accounts, made, however, in the first instance in Mr. Piatt's case, dated 27 January 1816, by the then Secretary of War, successor to the one who made the assurances.

*(See report, Piatt's case, in public documents, p. 8.)*

The first of these charges (viz. for 21,000) is for an allowance made by the then Secretary of War, in consequence of Mr. Piatt's drafts on the Government being protested, say 10 per ct. on \$210,000 as a reasonable compensation for the damages, &c. sustained by the Contractor, from the want of funds, and the delay of Government to take up his drafts.—*(See page 18, report, &c.)*

In point of fact, there had been *decisions* of the Dep't. the benefit of which as *decisions* had already been extended to Mr. Piatt; such for instance as the damages on protested bills of exchange. There had been *allowances* also; such for instance as that for supplies to distressed inhabitants. But these were not conceded to Mr. Piatt by reason of any *assurance* he had received, nor, it is supposed, as a favor to him, but in common with all other accounts similarly circumstanced, and as a *matter*

*of right.* The decision, as to damages particularly, was a general decision of the War Department, establishing a rule for the accounting officer, in all cases of bills dishonored and protested, on account of the inability of the Government to pay, embracing, therefore, all protested bills which the parties had a right to draw.

*(Report of select committee, page 3.)*

In the final settlement of the accounts of Mr. Anderson there was upwards of two hundred and fifty thousand dollars due him, but he had no damages or extra price for rations, allowed him in consequence of the advances made.

*(See T. Ringold's Letter, public document.)*

I am of opinion upon the within case that Mr. Anderson is justly and equitably entitled to interest at the rate of six per cent per annum, during the period of the delay of payment of the balances declared in his favor. The balance due him was by the contract with him to be immediately paid, and he was made chargeable with the like rate of interest for any default of repayment on his part.

JAMES KENT.

*Albany, October, 21, 1823.*

I have considered claim No. 3, and am of opinion that Mr. Anderson has a just and equitable claim to interest, only from the period, the balances were officially declared and warrants issued—the claim of interest in my judgment rests on a solid foundation—the contract binds the contractor to pay an interest of 6 per cent on any balance that may be due to the United States on settlement of accounts from the expiration of contract until paid. The contract provides that if any balance shall be due the contractor on any settlement of accounts *the same shall be immediately paid.* It will not be

contended that the silence of the contract, as to the Government's paying interest, is a manifestation of the sense of the parties, that they should be exempted from interest in case of a failure to pay the balance due immediately; such a stipulation would have been derogatory to the honor of the Government, in admitting its inability or unwillingness to pay immediately any balance found due. This consideration sufficiently accounts for the silence of the contract, as to the payment of interest on the part of the Government.

Events unfortunately deprived the Government of the means of being punctual in their payments, and this defeated the just expectations of the other party. If we apply to the Government the same rules of interpretation in its contracts, as are applied to individuals, the question would admit of no doubt; for it is believed to be a universal rule that a promise to pay a sum of money on a certain day or a certain event, draws after it interest in case the promise is not observed.

It is highly equitable that it should be so, for the other party is deprived of the use of his money, and it is never enquired whether he could have used it beneficially so as to produce interest to him; this is always intended. In my opinion this claim is founded on principles of the highest equity and justice.

*Oct. 23d, 1823.*

A. SPENCER.

NOTE.—Claim 3th is for interest from the time the balance was ascertained and the warrants, issued until the final payment in *Jan.* 1816.

If this were a transaction between two individuals amenable to the law, there would not I think be a moment's hesitation as to the result, and I am not aware of any rule or reason why the United-States should be exempted from the general law. The contractor was bound in case of his default to pay 6 per cent interest, (thus fixing the rate between the parties) and the U. States not anticipa-



ting any inability on their part, promised immediate payment—they became unable to keep their promise; but they should now compensate the sufferers by their default. Independent of the Secretary of the Treasury's general order, I think Mr. Anderson is entitled to 6 per cent interest until paid; and besides (at least under that order, as well as by law) to any damages on protested drafts he may have had a right to draw and have drawn. In answer to the last question on the other side, I can only say that the United States, as well as every other debtor, are bound to make their payments in specie, and if they cannot do that, they should make the paper in which they do pay equivalent to specie.

THOS. ADDIS EMMET.

*New-York, Nov. 5th, 1823.*

*Statement of Damages and Interest.*

My demand under equitable considerations, according to the general decision of Secty. Crawford, would be as follows:—Take the amount of the average expenditure of each quarter at the minimum advance required, \$250,000.

|                                                                                                            |           |
|------------------------------------------------------------------------------------------------------------|-----------|
| Interest on \$250,000 from 1 March 1813, the time the Contractor had a right to draw, to 1st of June 1813, | \$3750,00 |
| From 1st of June to 1 Nov. 1814, the time the vouchers were actually furnished,                            | 6250,00   |
| From 1 Nov. 1814, to the time the first balance was declared, due March 15, 1815,                          | 5625,00   |

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\$15625,00

To this add damages on my bills protested for \$200,000, which at 10 per cent (the allowance made to John H. Piatt on a decision confirmed by Congress.) [See report of a select committee of Congress in session 1823, and a second committee in session of 1824.

} 20,000

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\$35.625,000

|                                                                                                                   |             |
|-------------------------------------------------------------------------------------------------------------------|-------------|
| Interest on balance officially declared due, until paid, as set forth in my account before the second comptroller | 10,000,00   |
| Discount on 56,700 Dlls. received in treasury notes 1 Sep. 1815 at 11 per cent is 6237                            |             |
| Discount on 138,632,91 received in treas'y notes 11 Jan. 1816, at 8 47-100 per cent, is                           | 15977,20    |
| As pr certificates Messrs. Prime, Ward & Sands, and Nevins & Townsend,                                            | 22,114,20   |
|                                                                                                                   | <hr/>       |
|                                                                                                                   | \$67,739,20 |

NOTE. Had the Government borrowed the above sum which they were bound to furnish by contract and usage, it would have cost them at that time \$20 for every hundred borrowed, U. States stock being at 80 per cent on 200,000 is \$40,000

*Extract from the Report of select Committee on Piatt's claims, (page 28, session 1824.)*

#### No. 21 Public Documents.

The sixth and last item of allowances (\$21,000) was for damages on bills protested. I am aware that Government pays no interest or damages in ordinary cases, because they are supposed to be ready to pay when justly called upon.

In this case no doubt exists but that Mr. Piatt had a right to draw, and that the Government could not pay. The act passed for Mr. Piatt's relief, required the accounting officers of the Treasury Department to settle his claim upon just and equitable principles.

The universal practice and laws of nearly the whole civilized world, has settled it as a just and equitable principle, that the interest and damages should follow a protested bill. The second Comptroller did not think it just and equitable to allow interests and damages, and

then take the amount again out of the cost of the rations. It is also said, that no damages were paid by Mr. Piatt. This is a question never asked by the drawer of a bill.

The fact of a bill being protested, is always considered as of equivalent damage to the holder to the amount allowed. This item was considered as an allowance on its own merits; it did not more than remunerate the Contractor for the damages sustained in having his bills protested.

#### OPINION.

No unreasonable or unnecessary delay on the part of the Officers of the United-States, was to be given to the settlement of the accounts of Mr. Anderson. This was a condition inserted in his contract, and if it had not been inserted, yet if his accounts were not duly passed upon with reasonable diligence, he ought not to suffer by the delay. His claim for interest upon the balances found due, (and which were strictly due when the accounts were rendered and the vouchers furnished) from the time he was entitled to have them passed upon, appears to me very just and equitable; I am of opinion, therefore, that he is entitled to interest according to the within claim.

JAMES KENT.

*Albany, Oct. 22, 1823.*

I have considered Mr. Anderson's third claim upon the Government, founded on the delay of the accountant to settle and report upon his accounts which he alledges were furnished, supported by vouchers, in the manner and form required and at regular periods. In the nature of things, as well as by the understanding of the parties, advances were to be made to the Contractor, in anticipation to enable him to comply with his contract; his right to these advances would necessarily depend upon the fact whether the state of his accounts would justify them. It is provided by the contract that no unreasonable or un-

necessary delay on the part of the Officers of the U. States shall be given to the settlement of the accounts of Mr. Anderson. If this delay took place whereby the Contractor was deprived of his right to draw, three months previous to the expiration of his contract, it must be manifest that he was not only deprived of funds to which he was entitled, but that he might have been greatly embarrassed. In my opinion he has a just claim on the Government for this infraction of the contract on their part; I know of no rule of compensation so free from objection, as the one which would apply in contracts between individuals that would be, to compensate the injured party by paying him interest on the balance, from the time the amount ought to have been settled, to the period when it was actually settled.

A. SPENCER.

Oct. 27, 1823.

It seems to me, that the Contractor is entitled to interest from the time he had a right to draw, till paid, and also to *damages on all protested bills* he had a right to draw, and did draw.

THOS. ADDIS EMMET.

New-York, Nov. 5, 1823.

*Reply of the late Contractor to the remarks made by the third Auditor, on the Contractor's claim for damages and interest on the amount officially declared due me, as per statement:—*

This claim has been reserved in all my letters to the War Department, extending retrospectively to the time that my contract expired—that is, 1st June, 1814. All the services had been performed, and equivalents had been rendered before that day; and by every rule and usage of the War Department, I was entitled on that day to the amount then due me. According to the decision of the Hon. W. H. Crawford, of 27 Jan. 1816, the claim

of interest might be carried back to the 1st March 1814, the time when it is acknowledged I had a right to draw in advance for funds required for the ensuing quarter. My letter of Oct. 27, 1814, to the Hon. James Monroe, requests that the treasury notes, which was then the only payment which the Government had it in their power to make, should be dated on the 1st June 1814, and bear interest from that day. If this reasonable request had been listened to, I would have received some compensation for the depreciation of the paper, and delay of payment in the amount of interest at 5 and 2-5 per cent from the period the services, and equivalents were rendered—that is to say, the first day of June 1814.

My demand under equitable considerations, according to the general decision of Secretary Crawford, would be as follows :—Take the amount of the average expenditure of each quarter at the lowest sum of 250,000 dollars.

|                                                                                                                                                                                                 | <i>Interest.</i>   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 250,000 from 1st March to the 1st June,                                                                                                                                                         | \$3750,00          |
| Do from 1st June to the time when the<br>vouchers were absolutely furnished about<br>1 Nov.                                                                                                     | } 6250,00          |
| Do from the 1st Nov. 1814, to the time<br>the first balance was declared, March<br>15, 1815.                                                                                                    |                    |
| <b>TOTAL</b>                                                                                                                                                                                    | <b>\$15,625,00</b> |
| To this add damages on my bills protested<br>for 200,000, which at 10 per cent (the al-<br>lowance made to John H. Piatt on a deci-<br>sion confirmed by a select committee of<br>Congress) are | 20,000,00          |
|                                                                                                                                                                                                 | <hr/>              |
|                                                                                                                                                                                                 | \$35,625,00*       |
| * To this is to be added the actual interest af-<br>ter the balance had been ascertained and<br>declared,                                                                                       | 10,000,00          |
| and discounts on treasury notes                                                                                                                                                                 | 22,114,20          |
|                                                                                                                                                                                                 | <hr/>              |
|                                                                                                                                                                                                 | 67,739,20          |



The protested drafts are the following :

1. Draft, dated New-York Oct. 27, 1814,  
on the Hon. James Monroe, at sight pro-  
tested at Georgetown, D. C. 2 Nov. 1814  
as duly attested by William Smith, No-  
tary public, for 150,000 Dolls.
  2. Draft, dated New-York Oct. 27, 1814,  
at 15 days after date, on the Hon. James  
Munroe, protested at Georgetown, D.  
C. 15 Nov. 1814, attested as above, for 50,000 Dolls.
- 
- 200,000 Dolls.

The above \$35,625,00 was submitted to the third Auditor in my letter of 13 August 1823, as the amount of a claim under equitable allowances, according to the decision of Secretary Crawford of 27 Jan. 1816, establishing a *general principle* for damages and interest. It is now submitted for decision to the consideration of the Hon. Secretary of War.

The present claim, however, as now referred by the third Auditor to the second Comptroller, it will be perceived includes none of the above claims in equity. It is a claim, under the tenth article of my contract, comprising only the interest accruing from the time when they were actually paid. The certificate of John W. Yates was exhibited by me, not as a rule of damages, but to show that the joint fortunes of myself and my associates were not competent to furnish the capital required to carry the contracts into execution. The funds necessary for this purpose were the subject of an express stipulation in my letter of proposal of 6th January 1813.

The amount borrowed of the Bank previous to the 1st June 1813 is small. See the Certificates aforesaid.—The amount borrowed of the Banks at the special time of the real embarrassment of the fiscal concerns of government: viz.—in 1814 '15 '16 constitutes nearly the aggregate besides other sums borrowed by the Contractor of Banks in New-York, on his own security.—The

very disingenuous inquiry of the the third Auditor, "can damages be claimed on the ground of the certificate of the bank of having borrowed money in March 1813?" insinuates a proposition, which the second Comptroller will instantly perceive, is neither true nor relevant. The certificate embraces loans made from 1813 to 13 Feb. 1816. Surely common decency ought to have induced him to extend his inquiry to the latest period when loans were made from the State Bank to the Contractor for the purpose of carrying into operation the wishes and commands of Government. Besides, this certificate is not in the least necessary to establish this claim; every body knows that it is a principle of common law recognized by all our courts, that the non payment of a sum or balance due is itself full proof of the loss of interest, which necessarily follows the original debt until both principal and interest are finally paid.

The third Auditor has said that at the time of actual payment, in 1815 and 1816, treasury notes bore interest until paid or funded, and that at the same time, "*were from 3 to 4 per cent above par.*" Sir, if it be a fact, as alledged by the third Auditor, that treasury notes "were from 3 to 4 per cent above par," then the decision of the Hon. Secretary Crawford of 27 Jan. 1816 will compel me to pay the premium on the amount so received from the U. States. By the same rule I claim from the justice of the U. States, indemnification, for the loss I have sustained from the payment of my demands in treasury notes instead of specie; a claim which is reserved on the accounts lately presented by me to the third Auditor, together with the right to call for the benefit of such general provision as Congress may have made, or may hereafter make, for the general relief of public creditors, who have furnished supplies, and received the amount in treasury notes or in notes of local banks, which were below specie value at the time and place of payment.

The third auditor, however, has attempted to defeat this claim by asserting that large balances were previous-

ly due by me to Government, during the existence of the contracts of 7 Nov. 1811, and 25 Feb. 1813.

I do not wish, sir, even in my defence, under all the wrongs I have suffered, to cast any reflections on the third Auditor, or his predecessor Mr. Simmons ; but, sir, I lose all patience, when my rightful demands are thus evaded by assertions, not at all to the purpose, or when to the purpose, not founded in fact. All balances, which before the termination of the contract remained in the hands of the contractor, were advances voluntarily made by the Government to facilitate its own operations, and which it would be preposterous to plead as set offs to a claim for interest on delayed payments.

Again—even if this plea of the third Auditor were at all to the purpose, it is so palpable a misconception, that I cheerfully acquit him of wilful misrepresentation and ascribe the mistake to haste or inadvertence. He has evidently been led into error by not adverting to the difference between a partial or nominal balance, and a total or final balance. When the balance as stated by this gentleman, was supposed to be due, vouchers for all the issues and all the deposits made by order of Government, had been filed in the office agreeably to the forms, and rules of the Accountant Department, as well as those adopted for the deposit accounts, by the Superintendent General of public supplies ; from which latter office, I am ready to admit, my documents ever received the earliest attention. If it is deemed necessary to substantiate this declaration, I have abundant proof—and my letters are full of evidence that I have constantly labored to furnish all the vouchers of debits with the vouchers of credit.

*Claim 6. See page 14, (O.)*

In June of the year 1808, I proposed in a sealed letter, and in *words at full length*, to supply the rations required by the U. States for the state of New-York at sixteen cents, from 1st of January 1809 to 1st June 1810, (the contract of 1808 being at 17 cents.

My bid was presented and received at proper time and place, and accompanied with full and satisfactory evidence of character, fitness, and guarantee, qualifications which were fully admitted by the then Secretary of War. I was soon informed, that the incumbent, who then held the contracts for New-York as well as all the Eastern States, had opposed me in a bid "*at 18 cents per ration, or one mill below any other proponent,*" and that there were precedents for this nominal and extraordinary competition; I lost no time in repelling this procedure with a becoming spirit, and in a respectful remonstrance and protest, endeavoring to shew the fatal tendency to the public interest, if such nominal and qualified bids were received. The Secretary of War sent for me, and after saying he had read the remonstrance, still adhered to the admission of the bid on the score of precedent, but was pleased to add that we were both too high, and must bid again. On the impulse of the moment, I was about to take my leave, and abandon at once all connection with Government in contracts; and I now solemnly believe that my rival would in that case have had the contract filled up at 18 cents,\* but fortune directed it otherwise; my adversary was called in and ordered to take a position on the other side of the room, pencil and paper were handed to each of us, and the Secretary was pleased to say the lowest price should have the contract. My adversary's 14 cents 9 mills, mine 14 cents 8 mills. Was I not compelled to take this contract below the legal claim, and thus the public faith violated to my disadvantage, being equal to one cent two mills on every ration issued during the contract, and is not my claim good in an appeal for an allowance of the additional sum of one cent 2 mills, on each ration issued per official return during aforesaid period.

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\* The official vouchers and original bids have been called for from the files of the office, they are not to be found. This claim has not been made for indemnification, but it is easy to be seen, had it not been for the competition on the part of the claimant, the difference in price of the rations of 148 mills or 18 cents, during the period of 17 months of war, would have exceeded 200,000 DOLLARS to the loss of the Government. The gain to the U. States in the difference of the first bid of 16 cents or 348 in the period of 17 months of war, would have exceeded \$75,000.



## OPINION.

It appears to me there can be no doubt that Mr. Anderson's proposition in June 1808, to supply at sixteen cents ought to have been accepted by the War Department as the lowest offer: and it seems to me to be equally clear that the offer made by his competitor, at eighteen cents per ration, "or one mill below any other proponent," was entirely inadmissible. But I am also of the opinion that Mr. Anderson's subsequent offer, which was accepted and consummated by contract, was a waiver of his antecedent offer, and that it concludes him from any demand on the Government arising from his final proposition.

A SPENCER.

*Albany, Oct. 24th, 1823.*

Upon the facts stated in this case, I should conclude that Mr. Anderson was estopped by his second offer to take 14 cents 8 mills from claiming payment according to his first offer at a higher rate. The claim would have been just and fair if he had not acceded to the proposition of making a renewed offer. This was a waiver by him of his equities under the first offer, and if he had rested upon his first offer, I should have been of opinion that his offer was the one that ought to have been received. The offer of the other competitor of the sum of 18 cents was a certain and a specific offer and the addition thereto that he would take *one mill below any other person*, was a very exceptionable and I should think an utterly inadmissible qualification.

*Albany, Oct. 21, 1823.*

JAMES KENT.

Claim 1.—Equitable Allowance, see page 14 (P.)  
*Contained in letter 10 Sept 1823, to the Third Auditor,  
 of the Treasury department,*

By the proposals and accompanying letters constituting the contract of 25th Feb. 1813, I fully reserve the



right of purchasing flour and liquor on the Seaboard and Southern Atlantic ports. I did so to the amount of 4900 barrels flour, and by my letters to the Secretary of War dated 4th of Feb. 1813, and 23d of March, 1813, I notified him of the purchase, asking advice if the provision should be insured from capture risks, (the risk of the sea being my own.) The risk of capture that of the U. S. I was answered that the article must be shipped in small parcels, and not be insured. Before the shippage could be effected, the mouths of the Chesapeake, the Delaware, and the Harbour of New-York, were effectually blockaded by the Enemy. If I had shipped the said articles which were intended for the Armies on the Northern Frontier of New-York, they would have been inevitably captured, and the U. S. would have suffered a loss of \$63,700 exclusive of the loss of the vessels, conveying the articles. I was under the necessity of either selling the said flour at the Ports of Alexandria Va. Baltimore Md. Philadelphia Pa. at reduced prices, or transport over land to New-York, which latter was done by me.

Is not the price of land carriage over that of water, a fair charge to the United States, satisfactory vouchers to be produced for such extra transportation.

#### OPINION.

I have considered the within claim, the probable blockade of the Chesapeake, the Delaware and the harbour of New-York, were events which the Contractor ought, and probably did anticipate—but the Contract secures him against capture, it is entirely improbable, that when the Contractor indicated to the Secretary of War, his intention to purchase Flour and Whiskey at the South, he meant to incur the charge of transportation by Land. He had a right to send by Water, and the Government was consulted upon the subject of insurance and declined it, but authorised shipments in small parcels and in different vessels. The blockades which subsequently took

place, forbid this course as a discrete and prudent measure. The Contractor with a view of saving the national property, instead of sending the provisions into the jaws of the Enemy, preferred assuming a heavy charge, relying on the justice of Government. It appears to me that he is entitled upon principles of manifest Equity to be paid the difference between the two modes of conveyance. The Contractor's motive was patriotic and honorable, and as the Government reaped the advantage, they ought to afford an indemnity.

A. SPENCER.

October 25, 1823.

I have perused the within case, and I entertain no doubt that upon the facts there stated, Mr. Anderson is equitably entitled to an allowance for the extra expense of the Land carriage to New-York. Though it was provided in the Contract, that all supplies were to be delivered at the posts where they should be required, without expense to the United States, yet it was also provided that all losses sustained by the depredations of the Enemy, in articles intended to compose rations, should be paid for. The intervention of the usual and proper means of transportation by Water, by the Enemy's ships and the loss sustained by Mr. Anderson by that means, appears to me, to fall within the Spirit and equity of that provision and the loss ought to be paid for.

JAMES KENT.

Albany, October 21, 1823.

From the circumstances detailed on the other side (the risk of Capture having been undertaken by the United States, it would seem that the transportation by Land was entirely for their benefit. As if the flour had been captured, that event so far as related to the Contractor, would have been equivalent to a delivery at the place of

deposit. I therefore think it perfectly equitable that the United States, which received the benefit from the increased expense, should bear it, I presume the Contractor would have been bound by his contract to defray the expense of a Water conveyance, he should therefore still contribute to that extent, towards the expense of transportation; but the difference between the expense of Land and Water carriage appears to me fairly chargeable to the Government.

THOS. ADDIS EMMET.

New-York, November 4, 1823.

New-York, Feb. 4, 1813.

Sir.

When I was last at the seat of Government, I stated the necessity of, and my intention to purchase Flour and Whiskey at a Southern Port, for the supply of the U. S. Troops, accordingly I have purchased and paid for one thousand barrels of flour, in Alexandria, and one hundred and fifty hhds, Whiskey at Philadelphia, to be brought to this port.—The Sea risk of the whole is at my hazard, the risk of the Government is the hazard of capture. I deem it prudent for me to procure insurance in this place to the full amount of my invoices, and I beg leave to request your instructions whether I shall procure at the same time insurance against capture, to the amount, that these articles are charged to government, under my contract. I am ever desirous of receiving, and obeying the instructions of the Government.

I have the honor, to remain,

With sentiments of respect,

Your ob't. serv't.

(Signed,) ELBERT ANDERSON, JR.

Hon. John Armstrong, Sect'y. at War, Washington.

A true copy.—C. Vande Venter.

*War Department, February 13th, 1813.*

Sir—

Your letter of the 4th inst. has been received. You will please to state in what quantities the flour and whiskey have been shipped in the same vessel. If shipped in small parcels by different vessels, it would not seem advisable to procure any insurance.

Respectfully,

Sir, your ob't. servant,

JOHN ARMSTRONG.

Elbert Anderson, Jun. Esq.

*Army Contractor, New-York.*

*New-York, Feb. 18th, 1813.*

Sir—

I have the honor to acknowledge the receipt of your letter of 13th inst. The flour and whiskey has been ordered to be shipped in parcels of about 300 bbls. flour, and 25 to 30 hhds. of whiskey in different vessels. The pressing and urgent nature of my business has detained me from proceeding to the seat of Government. I shall leave this on Friday, and shall be in Washington in a few days thereafter.

I have the honor to remain,

With great respect,

Your ob't. servant,

ELBERT ANDERSON, JR.

Hon. John Armstrong,

*Secretary of War, Washington.*

True copy—C. Vande Venter.

*Extract letter dated New-York, 23d March, 1813.*

“I have now 4900 Barrels of Flour at Philadelphia, Baltimore and Alexandria, but it is impossible notwithstanding

ing the privilege to ship by coastwise, to pass the Blockading squadron, and I have at *great expense* ordered a greater part of the same over land. Thus, Sir, every exertion shall be continued on my part to execute my duties with faithfulness."

I remain, &c. &c.

ELBERT ANDERSON, JR.

Hon. John Armstrong, Sec't. of War.

#### OPINION.

*Cask Claim, (Q.) See page 15.*

We have examined the contracts submitted to us for consideration, and are of opinion that Mr. Anderson is fairly entitled to a reasonable allowance for the barrels, boxes, packages, &c. containing the rations, delivered by him pursuant to his contracts. *Rations* are the thing contracted for, which certainly mean no more than the quantity of the article, without reference to what it may be contained in.—In that way it is always furnished to the Soldier, he bringing the machine to contain it. What is a ration to him, when he receives it, from Government, is also a ration to Government, when it is received from the Contractor. We know that in the purchase of many of the articles of provision, &c. the things they are contained in are either to be returned or paid for—as to other articles, there may be a diversity according to the usage of business; which usage will there always decide, because the parties must be supposed to have dealt with a knowledge of that usage, and to have included the value of the box or package &c. in the nominal price of the article. In the contracts with Government, it seems to us that usage is clearly the other way. Those made in time of peace have always been expounded, by receiving the *rations merely*, at the places of issue; and when on a march, great inconvenience or necessity required that the Contractor's barrels, &c. should be used, they were always returned or allowed for to him. This was a practice which seems to have settled the con-



struction of the contract ; and when in time of war, those which related to the same thing used the same language. We think the terms used can only receive the same interpretation. If Government intended differently their change of intention should have been expressly stated ; for the Contractor must be presumed to have made his bargain with a view to the established usage. No satisfactory reason seems assignable why he should be called upon to do more in time of war, under the same bargain, than would be required of him in the event of peace.

WM. PINKNEY.

THOS. ADDIS EMMET.

JOS. OGDEN HOFFMAN.

*Washington City, March 10th, 1815.*

Mr. Anderson having submitted to me for my consideration, his contracts with the Government of the United-States for supplying rations, (one of which contracts bears date the 25th Feb. 1813, and was made with the Secretary for the Department of War) and his claim under the same for a reasonable allowance for the boxes, packages, barrels, inclosures, &c. containing the meat, flour, liquor and other component parts of the rations furnished in pursuance of his contracts, I am of opinion that in all those cases in which the boxes, &c. were delivered together with the rations, and retained on the part of Government, he is justly entitled to a fair and reasonable allowance for the value of the inclosure. This would appear to be according to the ordinary course of dealing, and there is nothing in the contracts from which we are to infer that the beef, pork, liquor, &c. of which the rations consisted,

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NOTE—At the same time the above opinions were given, the written opinion was fully given in favor of this claim by the late SAMUEL DEXTER this opinion was left in the third Auditor's office. but is now to be FOUND. It is worthy of remark that the late S Dexter WAS ACTING SECRETARY OF WAR AND WAS THE AUTHOR OF THE BLANK FORMS OF THE VERY CONTRACTS THAT THE CLAIM OF CASKS WERE MADE UNDER.

were to include the vessel or cask or box in which they were contained. He was simply to furnish rations, which does not necessarily, or according to usage, include the material for carrying or containing the same.

JAMES KENT.

*Albany, October 21, 1823.*

I have considered the question answered in the within opinion of Chancellor Kent's, as well in reference to the contract of the 25th of February 1813, as to the contract of the 7th of November 1811, and fully concur in the same.

A. SPENCER.

*Albany, October 24, 1823.*

Copy from the Records of the War Office.

*War Department, Oct. 13, 1814.*

SIR,

Your letter of the 3d inst. inclosing the contract, correspondence and accounts of James Byers, Esq. Contractor, has been received.

The question submitted to this Department, appears to have been anticipated in Mr. Byers' proposal of Jan. 27, 1812, to furnish the deposits referred to, reserving to himself a claim on the Government for reasonable and equitable allowances beyond the price stipulated in his contract, for all supplies furnished before that contract should take effect. It does not appear by the contract referred to, that Mr. Byers was bound to furnish casks and boxes; or in other words, it does appear that when the rations were issued, the casks and boxes belonged to the contractor. If, therefore, the casks, boxes,

&c. have not been returned to him, and are charged at a fair price, the amount should be passed to his credit,

I am, sir,

Very respectfully,

Your ob't servant,

JAMES MONROE.

Col. T. Lear, Accountant War Dep't.

*Reply by the late Contractor to the Third Auditor's remarks on the Cask Claim.*

**A.** The Contractor is in all cases, entitled to indemnification, for Casks or Packages; furnished and not returned.

**I. 1.** By every principle of law and equity, the Contractor should be indemnified for all losses and expenses incurred in consequence of requisitions made by Government, beyond the stipulation of his Contract.

2. The Contractor engages to furnish *only provisions*, he does not undertake to furnish Casks or Packages of any kind.

3. These Casks or Packages were retained by Government, for the benefit and accomodation of Government.

4. Many of these Casks or Packages, were never returned to the Contractor.—It follows, then, by an application of the principle (N. 1.) that, for all the Casks or Packages not returned to the Contractor, he is fairly entitled to an adequate compensation.

**II. 1.** This principle is admitted, fixed and applied, by the decision of Secretary Crawford, 27th of January, 1816.

2. Independent of this decision, the principle is one so obvious, so well understood, and so constantly acted upon, that no statute or precedent can possibly increase or diminish its force.

**B.** The Contractor has always been paid for Casks &c. delivered along with the provisions, to Troops on a march, or on board of transports.—The Government by admitting his claim in *this* case, admit it in *all*, for there is no difference in the principle which supports the demand, whether one cask or one thousand have been required and delivered.

**C.** It is objected to this claim.

1. That the stipulation to furnish the provision, comprehends a stipulation to furnish the casks.—This extension of rights, privileges and powers, by arbitrary construction, convenient as it may be, is in the highest degree, capricious, dangerous and unjust. The language of the Contract is express—*Rations* are the things contracted for, and a ration is defined by the Contract, to be provision and provision alone. The Casks, Packages, Boxes &c. might have been claimed by the Contractor, at the place of deposit.—By being left—the U. S, escaped all the trouble and expense of repackaging.—

2. It is objected, that the perquisites of issue were intended to cover the prices of the packages.—This is an idle evasion—there is nothing in the language of the Contract, to warrant so strange a construction.—Besides, to this objection, there exists this unanswerable reply.—The issuing Contractor receives the same perquisites, whether he or his predecessors had furnished the casks and provision.

3. It is objected, that by the usage of Merchants, no

separate charge is made for Casks or Packages.—To this, it is barely necessary to remark,

1. That where merchandise is required by number, measure, or weight, (as in the case at present considered) and not by the package, cask, box, or vessel—the inclosure is a separate charge.—2. That in many purchases by the package or vessel. (as in the case of soap, candles &c.) the package is a separate charge.—And 3d, in all cases the value of the inclosure is either a separate charge, or what is precisely the same, is considered in the price of the contents.

**D.** The decision of the Honorable James Monroe, Oct. 13, 1814, fully admits and deliberately sanctions the validity of the claim, and the soundness of the principle herein contended for. After having distinctly acknowledged the force and generality of this principle—the question is at once concluded.—After this, it is not permitted, it is impossible, to debar a subsequent claimant, (in support of whose demand, the arguments of the Secretary may be applied *word for word*, with full effect,) from the recovery of a claim, whose merits are identically the same. There is indeed little doubt, that the principle was originally intended as a general principle. The after construction given to this sound and statesmanlike decision, may have grown out of some policy of which the claimant can see neither the force nor the justice.—That a codicil was added, giving to the decision, of the 13th of Oct. 1814, a limited and partial interpretation, long after the general decision was recorded, will appear by reference to the document itself, as well as by the record of the general decision, which stands alone on the books of the war office, without alteration, erasure interpolation or codicil.

Again, it is of no sort of consequence, when or where, or why, or how, the alteration or addition to the decision was made, it is of no importance, whether the original decision was modified or not—the admission of the merits of the cask claim is *full* sufficient and *operative*, and can



be no way affected by the *manner* in which it was paid, or the *additional* reasons for which it was granted. The arguments used by the Secretary in favor of Mr. Byers' claim for casks, are *independent* of his claim for other indemnities.—They would remain in full force, together with the principle they support, if Mr. Byers had never reserved or maintained a right to claim indemnification for the expenses of premature supplies.—For these arguments in fact, owe nothing of their strength to his claims, for other compensations.

If this allowance was designed to compensate him for the trouble and expense sustained in supplying rations, and making deposits before his contract commenced, why was not the allowance made under the clause, which reserved to Mr. Byers, indemnification for such trouble and expense. *That clause is acknowledged to be amply sufficient to justify that claim.* Why acknowledge two claims in order to grant one? Why was the merits of his cask claim deliberately discussed, admitted and maintained? Why was it admitted on principles which apply with precisely equal force to E. Anderson's case? Mr. Byers did not stipulate that he should be paid for casks. To retain Mr. Byers' casks, then, was no more a hardship than to retain Mr. Anderson's. There was nothing in the circumstances under which Mr. Byers made his preparatory purchases and supplies, which gave him a greater right to the casks containing these provisions, than to those which contained the provision bought after his contract commenced. The losses and inconveniences, from the effects of which Mr. Byers claimed exemption at the time, were entirely independent of the loss of casks, &c. for the loss of the casks would be no hardship to Mr. Byers unless they were his property. And if they were his property, the casks for which E. A. now claims, were to the same extent E. A.'s property. If the cask-claim, as is now pretended, be not valid in principle, why was not that claim when presented by Mr. Byers, rejected; and the indemnification for the

trouble and expense of preparatory supplies granted under the clause by which it was expressly secured. There was not the smallest necessity of connecting this indemnification with any other demand, or of acknowledging the merits of the cash-claim, in order to justify the payment of the other.

**E.** After all, the fact is that Mr. Anderson did as much more than his contract required, as Mr. Byers did; and is, therefore, on the very ground assumed by the Auditor, and independent of the foregoing considerations entitled to relief to the full extent of his extra-services. For it is not true, as alleged by the third Auditor, that Mr. Anderson could be called upon to make the deposits which he did make, by virtue of his letter of 28th of January, 1812.

On the arrival of Mr. Byers and Mr. Anderson at the seat of Government, to make "a new arrangement for the provisioning of the army." Upon being asked whether we would make our Contracts applicable to a state of War, that is, to supply forces much larger than those contemplated at the time we signed the Contracts, and at the very low price of our existing Contracts (14 cent.) My answer is contained in my letter of the 28th of January, 1812. In that letter, I stipulated to *retain all the covenants and conditions of the existing Contract*. but to supply, at 14 d. per ration, the troops which would be required for purposes of war, conformably to the *spirit and meaning of the several covenants of my existing contracts*. To what extent I rendered services, in compliance with the requisitions beyond the stipulations of my contract, may be seen by the following sketch.

*Stipulations of Contract*  
8, Nor. 1810.

1. That supplies shall be furnished in advance

*Requisitions as executed.*

To make deposits in advance at Albany, Troy,

at the fortified places and military posts that are or may be established in the States &c.

2. That these supplies shall be furnished in such quantities as shall not exceed what is sufficient for the troops to be there stationed.

3. By the usages of the service, it is left with the contractor to issue fresh and salt meat alternately, and when it was required by general orders to issue fresh or salted meat, the requisition never extended to an entire week.

4. That the option of issuing bread or flour five days in every week, shall be with the contractor.

Lansingburg, and the western parts of the state of N. York, which places were not fortified nor military posts.

To provide rations sufficient for 25,000 men, at the above places, when there was little more than a recruiting party at Albany, and no troops at the other posts or places.

To issue under the foregoing requisition, salted beef and pork exclusively for the whole time of 2 months to the above 25,000 men.

4. To furnish flour and not bread.

(See latter requisition page 31.)

**F.** To conclude, there are some circumstances, which on the ground of extra services, go even further to support Mr. Anderson's claim, than that of Mr. Byers.—Mr. A's. price and requisition and Mr. B's. were the same, but Mr. A's. deposits were purchased and made in the state of New-York, under circumstances *favorable* to the U. States, and contiguous to places which afterwards became the seat of War. His at places favorable to *himself*, at a very *great distance* from the actual seat of military operations, mine on *navigable waters*, where provision bore a higher price for home or foreign consumption, his, at the head waters of the Connecticut, where the articles were cheaper in consequence of their

remoteness from foreign and domestic markets. Mine at places favorable for the purposes of transportation for the use of the troops and armies of the U. States—his at places which required a land transportation of several hundred miles, at the risk, hazard and expense of the U. States. And it would be easy to show if required, in other circumstances in which this compliance with the wishes and views of Government operated, decidedly to E. Anderson's detriment and disadvantage.

Thus it appears, that E. Anderson is entitled to the amount of this claim.

1. On common principles of law and equity.
2. On the decision of Secretary Crawford, 27th January, 1816.
3. On the ground that it has always been admitted, for casks delivered to troops on a march, or on board of transports; the claim being the same in nature and principle, and differing only in amount.
4. On the ground of merchants' usage.
5. On the decision of the Hon. James Monroe, and on the general principle set forth in that decision.
6. On the ground of extra-services.
7. After the casks are emptied by issue, the U. States never pretended to claim them, in corroboration of the arguments and considerations above exhibited, the late Contractor has it in his power to present the deliberate opinions of professional men, whose extraordinary talents and thorough acquaintance with every department of law, entitle them to all possible deference and respect, while their unquestionable integrity, their love of justice, and strict impartiality; their long tried virtues, and their exalted reputations make it absolutely and utterly impossi-

ble to believe, that they were governed in their decisions by other than the best and the purest of motives, a sincere and disinterested anxiety to discover, to express and to support the truth.

*War Department, February 22d, 1812.*

Sir.

In conformity to the proposal contained in your letter of the 27th of January, you will proceed immediately to purchase provisions sufficient to furnish rations for twenty five thousand men, for two months, calculating the issues of meat, to consist wholly of salted beef and pork, two thirds beef, and one third pork. The object being in the first instance, to secure the flour and salted meat. The providing the small parts of the rations, may be delayed for the present. *The purchases may be made in such parts of the country, as may be found to afford the supplies on the best terms*, having in view Walpole, in New Hampshire, or Westminster, in the State of Vermont, (Westminster is preferred,) Windsor in Vermont, all on Connecticut river, Vergennes, Fairhaven and Burlington, in Vermont, on Lake Champlain, as places of deposit, of which places Walpole or Westminster and Burlington, are considered principal and most important. The principal part of the provisions, that is the meat and flour, to be purchased, may be delivered one half at Walpole, or Westminster, the other half at or near Burlington but the *latter moiety* not immediately on the navigable waters of the Lake. But as the purchases may be made by you in *different parts of the country*, and as a removal of the whole to the several places of deposit before mentioned, if required immediately may imply an additional and extraordinary expense, such parts of the supplies as may be made at a considerable distance from them, may remain for the present, where they are purchas-



ed, and be transferred hereafter. The principal places of deposit, are designated with a view of enabling you in making the purchases, to form an idea of the expense of transportation, and to *make your engagements on the most advantageous terms*. In addition to the places, herein before named, *Springfield in Massachusetts*, may be considered as a place of deposit for rations sufficient for fifteen hundred men, for two months.

You will advise this department of the progress which you make, and draw your bills as you make the purchases, accompanied with letters of advice.

JAMES BYERS, Esq. Contractor.

A true Copy from the record.

C. VANDE VENTER.

(Q.) *Cask captured and destroyed.---Claims under Contract 25th Feb. 1813.*

Part of this amount, viz. \$1901,11 is claimed under the 6th article of the Contract, being actually captured or

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Note—It is painful to make a single comment on this letter; the letter of requisition on the present claimant, will be found page 31, and is dated three days after the one to J. Byers. It will only be remarked, that at the time the requisition is made on Mr. B. he had signed his contract commencing 1 June, 1812, and he then held one for *Springfield* and was in fact in the same situation as related to that post. as E. A. was to the state of New York. Nor was Mr. Byers' deposit completed or delivered to the U. S. until after the 1st June. But if it was, the policy of the Government to compel and force the Contractor to deposit preparatory to a *state of War*. On the 22d of Feb. 1812 there were Messrs. Ruggles of Massachusetts, who then held the Contract for that state. (expiring on 1st of June 1812,) who could and ought to have been called upon, instead of J. B. "who, (it is said) could not be legally called upon." Can it be presumed that Mr. A. was to be called upon, and others in like cases exempt? The truth is, the Government believed the parties A. and B. would execute this important order with the most efficiency. (See letter of 22d December, 1813—page 53.)

destroyed by the enemy. The balance \$2904,75 were lost and destroyed by means of the troops of the U. S. in descent of river St. Lawrence, both are claimed under the condition of the contract, allowing an augmented price of the ration, in proportion to the difficulty and expense of issue in the enemy's country, and *under the 6th article of the Contract.*

The claim of Mr. Anderson for the loss of the packages, boxes, barrels, &c. containing provisions, &c. as within claimed, falls under the sixth article of his contract, and there can be no reasonable doubt that if he is entitled to the packages he is entitled to the loss of them sustained by the depredations of the enemy, or by means of the troops of the U. States. The article says that *all losses* so sustained were to be allowed, and surely the packages, materials, &c. covering the provisions were property subject to loss, and being actually lost to the contractor, the demand falls within the terms and the palpable equity of the 6th article.

JAMES KENT.

*Albany, Oct. 22d, 1823.*

If the opinion of Chancellor Kent, in which I have concurred be correct that the Contractor is entitled to be paid, for boxes, packages, barrels, inclosures &c, delivered together with the rations, and retained on the part of the Government; then there can be no doubt, that the within claim ought to be allowed; but I consider this claim as standing on the express provisions of the Contract, which stipulates "that all losses sustained by depredations of an enemy, or by the means of the troops of the United States, shall be paid for."

If the packages &c. be the property of the Contractor, as contradistinguished from the rations, of which I have

no doubt, then the loss in question comes within the terms of the Contract, in either case it is not imputable to the laches of the Contractor, the loss proceeding from a casualty of War, or the act of the troops of the United States ; the government having assumed both these risks, in my opinion the Contractor is entitled upon the strictest principles to be paid a fair equivalent for the loss sustained.

A. SPENCER.

*Albany, Oct. 24, 1823.*

If the contractor has procured the appraisement and certificate of a Commissioned Officer, mentioned in the 6th article of the contract, or shewn why the latter could not be obtained, I think this a very fair and legal charge.

For the rations issued in the enemy's country, I think he is entitled to an augmentation in price in proportion to the increased expense of transportation and issue there.

THOS. ADDIS EMMET.

*New-York, Nov. 5th, 1823.*

*Reply of the late Contractor, to the Third Auditor's Report to Second Comptroller, on claim for Casks, Packages &c. lost captured and destroyed.*

This claim is so clearly provided for in the 6th article of the contract, that it is needless to resort to precedent, usage, or construction for the legality of the claim. Can it possibly be pretended, that casks, boxes, &c. are not requisite and necessary to convey or transport the provisions contained in those vessels? Surely common sense is against such perversion. The frequent cases of payment as recorded in all settlements with Contractors, for wagons, horses &c, necessarily used in transporting Contractors' provision, which have been captured or destroyed, is full and conclusive as to the usage, and it is

undeniable that, all casks, boxes &c. delivered to troops on the march, or on board of transports, have always been paid for ; the demand is just and clearly within the 6th article of the contract.

The 3d Auditor has certainly mistaken the intention of the general article of the contract, providing for extra expenses, "for transporting and issue in the Enemy's country." The purquisites of issue are for a distinct consideration and are not relevant to the discussion for or against the claim for casks. If an expedition is destined to go in the Enemy's country, as was the case in the descent of the St. Lawrence, such extra expenses as may be incurred by the Contractor either in the employment of agents or by losses of any property following that expedition, are indubitably a fair charge to the United States independent of the purquisites of issue and in the absence of the 6th article. It is ungenerous uncandid and unfair, to plead to this direct claim under a distinct article of the Contract, an advantage that has accrued to the contractor on any other stipulation of his contract. But, sir, what plea will justify the 3d Auditor,\* (who in his reply to one claim, pleads an advantage gained by the claimant in another) when you cast your eyes on the accounts before you, and perceive that the contractor has received no advantage of the purquisites of issue, either on the whole of the provisions delivered at the time of the setting out of the St. Lawrence expedition, *nor the 12 1-2 percent or even the one cent per ration for issuing the balance after the loss was deducted*, although the services were performed and the issues

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\* Concluding remark of the 3d Auditor on the claim for captured casks "He (the claimant) has derived other advantages from the loss of provision charged by him. In the instance of the losses on the St. Lawrence (and it is believed in all others) he has received a credit for the gross amount of losses, at the same rate as if the provisions had been actually issued, besides an allowance of 12 1-2 per cent on the provision returned to him for issue after the expedition was at end." (See page 5, note F.)

actually made by my agent on the descent and at the termination of the expedition at the French mills.

(R.) *Opinions on claim No. 7 for damages in receiving provision, not authorized by contract, of A. Porter, captured flour, &c. on the Niagara Frontier in June 1813. There being an excess of 306,338 rations of flour over the number of meat rations at 3 cents per rations \$9190,14. (See letter of 15 July 1813, page 45.)*

I am of opinion upon the within case that Mr. Anderson is entitled to some equitable allowance for the loss or damage he may have sustained by being obliged to receive an extra proportion of flour as within mentioned, inasmuch as the value of his contract depended materially upon preserving a rateable proportion between the several articles to be furnished within the contemplation of his contract.

JAMES KENT.

Albany, Oct. 22d. 1823.

I have considered claim number seven, and fully concur in the view taken of the subject by Mr. Secretary Crawford, indeed the principle he advances seems so just and obvious, as not to admit of further illustration.\*

A. SPENCER.

Oct. 24, 1823.

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\* "The Accountant in the settling the accounts of Contractors for 1814 '15, will allow all claims, &c.

Also, all losses sustained upon the issue of rations, not requirable by the contract.

All claims arising from loss sustained by requisitions, not authorized by the Contract."—See Crawford's letter of instruction, page 120.



Undoubtedly under the Contract, Mr. Anderson was not bound to receive the provisions from A. Porter, nor the captured flour he accepted them only as a voluntary accommodation to Government, and in his letter of the 15th of July, 1813 to Genl. Dearborn, reserving his claim to compensation. It seems then no more than justice, that he should be allowed for the excess of flour over the other rations. What the extent of that allowance should be, I have not the means of judging, even if I were otherwise competent to form an opinion\* on that point.

THOS. ADDIS EMMET.

*New-York, Nov. 5th, 1823.*

The damages sustained by the contractor in consequence of Gen. Dearborn's requisition, are so obvious, that it is a matter of extreme surprise, that any opposition should be made to this claim. Its merits are briefly these.

**A.** Gen. Dearborn orders the Contractor's agent to receive Mr. Porter's deposit. This requisition was illegal because. 1. This deposit consisted of very unequal proportions of the articles comprising the rations.—See third Article of the contract.—2. The provision was stored in barns, exposed to the weather and at distant places—See Porter's own letter. 3. There were no storehouses provided by Government to receive this provision—See 8th article of the contract and Barton's certificate. 4. The Contractor's agent was not authorised to receive this provision.

**B.** On hearing that Mr. Thorne who had been forbidden to receive provision except in equal proportions, had given a receipt, which without the sanction of the contractor was of no validity, Mr. Anderson explicitly protested

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\* The Government allowed A. Porter for this flour 5 cents per ration. they charged it with the captured flour at 7 1-2 cents to the Contractor. As he filled up the deficiency of the parts, he asked from the justice and equity of the U. States to charge the flour at 4 1-2 cents per ration in lieu of 7 1-2.

against this procedure, and reserved distinctly to himself a claim upon Government for damages, (see his letter of 18 July, dated Fort George, Upper Canada.)

Certainly the U. States will never so far compromise its honor and its dignity, as to attempt to avail itself of the ignorance or indiscretion of the Contractor's agent. Certainly the U. States, whose conduct ought ever to be governed by rigid principles of pure integrity, will never seek to retain an unfair advantage, derived from the error or misfortune of a public servant, whose best days have been devoted to the faithful and efficient execution of a dangerous, difficult, and thankless duty.\*

The Contractor is here made to receive no sort of equivalent for the sum which he was compelled to pay. If the provision had been deliberately purchased of Government, he would have had an equitable claim for the damages sustained. But in this instance damaged provision, in illegal proportions, and against all the stipulations of his contract, is thrust upon the hands of the contractor, who is charged precisely as if the provision had been sound, in due proportions, properly stored, and voluntarily received.

Again, let it be recollected, that this sacrifice involved the contractor in another quite as serious. In order to fill up this very deficiency, created by an unauthorized act of the Government, he is obliged to furnish large quantities of the other articles of the ration, which cost him more than the contract price, and consequently exposed him to considerable losses. And here it may be proper to observe, that no blame whatever is intended in this representation

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\* Mr. James Thorne was well known to every Officer serving on the Frontiers. With truth we can say, he was ever ready to accede to the wishes of the commanding Officers and was one of the best and most useful agents that ever was employed in this or any commissariat department. Gen. Dearborn directed him to do a *duty* that was opposed to the instructions of his principal.

to attach to Gen. Dearborn. *He*, most assuredly, never meant to injure the contractor. The decision of the Accounting Officers, who have attempted to make him suffer for the act of a public officer who neither had the *wish* nor the *right* unjustly to deprive him of a single cent, is all that he complains of.

**C.** With respect to the captured provision, the fact is that it was not only very much damaged, (See the certificate of N. Allen a gentleman of high respectability and unquestionable veracity—who was fully in possession of all the facts) but, it was, in truth not even inspected—See the certificate of John G. Camp. Quarter master on that frontier.

**D.** In answer to an objection raised by the third Auditor on the score of an unequal deposit subsequently made by Mr. Anderson himself—it is barely necessary to refer the Second Comptroller to the letter of Mr. Anderson's successor William D. Chever, of July, 1814, wherein he explicitly *agrees to receive these deposits, the inequality of which he expressly states constitutes no sort of objection.*

**E.** Mr. Piatt in the final settlement of his accounts was very properly credited for damaged provisions turned over to his agent by a former contractor.—Mr. Anderson is doubly entitled to the amount charged by him, because he protested at the time, strongly against the requisition of Gen. Dearborn.

*Loss and Damages in receiving Deposits in bulk or mass.*

I certify that I am fully aware that Elbert Anderson, Esq. late army contractor, must have suffered a loss from having been charged in mass with the deposit provision belonging to the United States, in the years 1813 and 1814.

laying at the original places of deposit, and located at different points in the state of New-York, forasmuch as some of these places are situated at a considerable distance from the frontier, where the said provisions were required to be issued, and in consequence of such distance of transportation, many portages and other obstacles occurred which must have occasioned considerable damage to Elbert Anderson; the more especially as the flour was constantly liable to loss from the common construction of the barrels—the hard bread always drying and liable to mould and water; the whiskey diminishing by evaporation and leakage; the pork and beef losing its pickle and thence liable to damage, and the soap subject to a heavy loss from drying. From these considerations, as well as from the usual losses incident to the transporting of property, I am of opinion that the damage incurred by any contractor, when property is removed the same distance as it was under the contract of Mr. E. Anderson, would be at least eight per cent.

*Damaged state of the provision received for issue.*

“In the large quantity of flour taken from the enemy in 1813, and passed over to the Contractor by the Quarter Master, E. Anderson sustained a heavy loss, not only in quantity, but more especially in the quality, as it really was not worth more than half price. In the parcel used by the Baker, Mr. William Eaton, the contractor, was compelled from a sense of justice to make him an additional allowance of 2 oz. of flour to the ration over and above the contract made with him for baking common flour. In making the above certificate, it may be proper to state that I have no interest whatever in the result of the settlement to be made.”

N. ALLEN.

Richmond, Ontario Co. N. }  
Y. Oct. 26th, 1823. }

In all cases when property belonging to the Contractor, was captured or destroyed by the enemy on the Niagara frontier during the late war, it was contained in barrels or boxes with the exception of the fresh beef.

N. ALLEN.

Oct. 26th, 1823.

*Value of the packages &c.*

I certify and declare, that all the Contractor's provision, excepting fresh beef, either intended for issue or public deposits, was contained in packages, such as Hhds. and Barrels for Whiskey and Vinegar, Barrels for flour and Bread, Barrels for Beef and Pork, and Boxes for Soap and Candles, and that all the provision placed in deposit, or captured on the Niagara frontier were contained in packages as aforesaid, and that they the said packages, were necessary for the transportation and safe keeping of said provision, and I do believe the said packages, are worth as follows, Hhds. three dollars, Barrels containing flour, 38 cts, and Barrels containing whiskey and beef and pork, one dollar each, Boxes containing soap and candles, 25 cents each, and that the above prices are generally paid for liquor, bbls. and Boxes containing soap and candles, by the Contractor, at the time of purchasing those articles, and that the price of flour and meat bbls. are valued, and paid at the average value and are included in the general price of the meat and flour equal to 38 cts for flour and bread bbls. and 100 for meat bbls, and that whiskey bbls. and soap and candle Boxes, generally make a distinct charge in addition to the price of the whiskey, soap and candles.

JAMES THORNE,

Nov. 4, 1823.



*Bad condition of A. Porter's deposit.*

I certify to the best of my recollection, that the flour on the Niagara frontier received in June, 1813, from Augustus Porter Esq. by Elbert Anderson, Esq. army contractor, was in bad order. Its exposed situation for want of suitable store Houses, was alone sufficient to produce material injury, being mostly deposited in *barus and sheds*, but little calculated to keep out the rain or to prevent waste by plunder.

JAMES THORNE.

*Marlborough, Woolen Factory, Nov. 4, 1823.*

*Extract of the orders given to my agents dated May 24, 1813.*

"If the provision left in deposit should not contain all the articles necessary for the rations, you will forthwith advise Messrs. Mather & Thorne of the deficiency, and state what articles and the quantity required for issue—It will be advisable not to give your receipt, or make me accountable for provision in a greater quantity at one time, than are absolute necessary; especially of those articles liable to waste or spoil, as Flour, Pork, or hard Bread, and whiskey that may be in a leaky condition.

The provision should be delivered to you, in due proportion of all articles comprising the rations."

Yours truly  
(Signed) ELBERT ANDERSON.

To the best of my recollection the above is a true copy of the instructions given to James B. Leonard.

JAMES THORNE.

*Nov. 1, 1823.*

*Claim for Transportation.*

Amount \$13,136.24. (See order for deposit.)

## EXTRACT.

“ The supplies for the use of the posts on Lake Ontario, will be deposited at the mouth of Genesee, Salina, Falltown, &c.”

(Signed) JOHN ARMSTRONG.

*War Dep't. 16th November, 1813.*

2. Order to remove the provision to other places on the invasion by the British, in Dec. 1813, for the supply of the Militia by Gen. Hall, dated Jan. 9, 1814. (See order of Maj. Gen. Hall.)

3. Order of Maj. Gen. Dearborn of the 4th and 14th April. (See orders.)

The above orders of 4th and 14th April, give full powers “as circumstances shall require.”

## OPINION.

I have considered the within claims numbered 5 and 6, and it appears to me, that the Contract speaks a plain unambiguous language. “ If the Contractor, shall be required to deposit provisions, at one place or post, and shall afterwards be required to remove them, to be delivered at another place or post, the expenses of such other place or post, shall be borne by the U. States.”

If the orders of Major Genl. Hall, and Major Genl. Dearborn, require, or authorise a removal of provisions already in deposit, or required to be deposited at any particular place or post, the expense of such removal comes within the express words of the Contract, it is also within its spirit and intencion, as to provisions required to be deposited; because the Contractor would naturally purchase provisions as near the place designated as a depo-

sit, as would be practicable, and he would also probably purchase provisions deliverable at the designated place. If after a deposit made, or after purchases with a view to be deposited in a particular place, a new destination is given to the provisions, it must necessarily subject the Contractor to a loss, in the transportation of the provisions from the place designated as the place of deposit originally to the place subsequently designated : and I am therefore of opinion that this claim if supported by the facts, is a legal and just one.

A SPENCER.

*Oct. 23d, 1823.*

The claim of Mr. Anderson, for transportation, in cases where he conveyed provisions, under the orders of General Dearborn, and General Hall, to other places of deposit, than those under the first order of deposit, appears to be entirely correct and just, so far as the expense of transportation was increased by a variation in the place of deposit. I cannot conceive how a doubt can arise as to the justice and legality of his claim. It is founded on the 3d article of his Contract, with the War Department, and there is no color or foundation for any distinction between the loss of provisions diverted from the original deposit, while *in transitu*, or after they had arrived at the Stores. If the expense and hazard of transportation, were enhanced by a change of place, under the orders of the commanding officers, the title to indemnity and fair compensation, for the extra expense and risk is indubitable.

JAMES KENT.

*New-York, October, 30, 1823.*

The contract, the letters of Gen. Dearborn and the order of Gen. Hall only relate in terms to provisions actually deposited. I do not think, therefore, that they give any legal support to a charge for the transportation of provis-

ions that were never in deposit ; particularly as the contract says " It is understood that all supplies are to be originally delivered at the Posts where they may be required, without any expense to the United States." But as the alterations in the posts for delivery, after the Contractor had made his purchases and taken his measures for depositing them in very different places, must have put him to inconvenience and expense, I think he is entitled to be remunerated for such expense and compensated for such inconvenience, so far as he can establish or lay a foundation for ascertaining their amount.

THOS. ADDIS EMMETT.

*New-York, Nov. 5, 1823.*

*Remarks on charge for transportation from Handford's Landing.*

In addition to the remarks made by me on file, I now add the explanatory letter of Major Genl. Hall, dated Oct. 27 1823 ; and request the attention of the 2nd Comptroller to this letter. Had the provision been actually deposited at Handfords Store House, for the deposit required, by the Secretary of War's requisition of the 16th of November, 1813, the expense to the United States would have been greatly increased, not only in Storage ; but the order of Genl. Hall, and the general order of Major Genl. Dearborn, of the 14th of April would have enabled the Contractor to have deducted his 12 1-2 per ct. and one cent per ration from *all* the supplies so deposited and the loss, risk, &c. in the transportation would have been borne by the United States.

The Contractor's provision, which had previously been transported at his own expense for issue on that frontier, had all been swept away and destroyed by the invasion of the British on the 31st of December 1813, and considering the critical state of that frontier by the invasion aforesaid, he could not hesitate to obey with promptness, without availing himself of his privilege of 30 days notice, the several requisitions of Major Genl. Hall. Had he

studied his own interest and delivered the provisions at Handford's store house, mouth of Genesee river, and had then taken them up for issues, he would have been fully justified by the terms of his contract ; but a sincere and disinterested anxiety to meet the exigencies of the times, and to avert the threatened disasters of that frontier, induced him to waive the exercise of a legal right. The provisions were purchased east of Genessee river in the county of Ontario, and had he carried them to Handford's landing, it would have been going out of the direct route to Batavia and Williamsville.

The 3d article of the contract certainly does not specifically require the provision to have actually changed owners, or to have been deposited in order to make the transportation a legal charge. (See 3d article of the contract.)

### *Claim for Tax on Whiskey.*

#### OPINION.

The claim founded upon the within statement of facts, does not appear to be admissable at the Treasury Department ; and the equity upon which the claim rests must be addressed to the justice of Congress. I should presume the appeal to that justice would not be made in vain, and Mr. Anderson has very equitable and persuasive grounds to ask for a reasonable indemnity for the depreciation of the value of his contract, by the direct interference of Government with the very article on which his contract with them was to operate. He contracts with the Government of the U. States to deliver whiskey rations at such a price, and Government then while the contract is in operation, lay a tax on whiskey, and raise and increase the price. it strikes me that Mr. A. has very strong, fair and full claims for a compensation by way of indemnity for the injurious operation of the duty upon his contract.

JAMES KENT.

*Albany, 22d, October, 1823.*



It appears to me that it would be very unjust not to make this allowance to Mr. Anderson. He estimated his prices and made his contract under a state of things which he had no right to presume would be changed during its continuance. Government, to supply its own convenience or wants, voluntarily made a change which essentially injured him, as the other contracting party, and probably deprived him of all his profits, the change might as well have been carried to an extent that would make the execution of the contract ruinous or impossible. If the change had been produced by the act of a stranger or foreign power, perhaps he would have no other resource but to throw himself on the generosity of the other party of the contract. But where that party to the contract has voluntarily done an act so essentially varying the situation and destroying the profits of the other party, I think he is bound to make good the consequences of such act.

THOMAS ADDIS EMMET.

*New-York, Nov. 5th, 1823.*

*Reply on Claim for damage sustained by Tax on Whiskey.*

Nothing can be said by me, to add to the force or justice of this claim, and had the 3d Auditor simply referred the Claimant to that August body, who no doubt for wise purposes imposed the tax, for redress of the injury done to him in one of the essential articles, which he was bound to furnish in a contract made before the Tax was laid by the Authority of Congress, it would not have involved him in the necessity of any reply.

The claim however, is one that addresses itself to the best interests and truest policy of an enlightened nation, ever jealous of its own rights, and ever ready to redress the wrongs done to its own citizens, by its own acts. While the Constitution of our Country enjoins in the most

solemn manner, the most sacred regard to the fulfilment of public faith, this claim for indemnification is one that must ever be acknowledged, by the unanimous concurrence and consent of every man in this community.

I have considered the within claim to an allowance on the article of whiskey, in consequence of the act of Congress, of the 24th of July, 1813. It is presumed to be an undeniable proposition, that the same principles which govern and control the contracts of individuals, ought in a moral and equitable view, to be applied between the Government and an individual. If an individual had by his own act prevented a party with whom he had contracted, from the performance of his contract ; or had artificially and contrary to the just expectations of the other party, enhanced the price of an article contracted to be delivered, it is beyond all doubt, that a court of equity, would afford relief to the injured party. The Government undoubtedly for wise purposes, passed the act referred to, but in doing so they unintentionally injured Mr. Anderson ; by virtually changing the nature of his contract, and imposing upon him a burden which he never could have contemplated when he entered into his contract, on the 25th of February, 1813, the direct effect of this act of the 24th of July, 1813, was to enhance the price of whiskey, and thereby Mr. Anderson was prevented from obtaining it upon the terms contemplated by both the parties to the contract. It is true that Mr. Anderson took upon himself all the risks of the fluctuation in the market ; but he did not take upon him the risk of the rise in the price of whiskey, produced by the act of the other contracting party. It must have been impliedly understood by him, that the other party should do nothing to enhance artificially, the price of whiskey.

I cannot hesitate in saying that after the Government have contracted for the delivery of an article at a stipulated price, then to pass an act having a material influence

on the price, and yet to insist on its delivery at the former price, would be an extremely rigorous and apparently an unjust procedure. There would be no safety in contracting with the Government, if it was not bound by the same rules of good faith, which would be exacted of an individual.

Can it be doubted that had the Contractor foreseen this event, (the passing of the act, of the 24th of July 1813.) that he would not have guarded against it by his contract? And can it be believed that the Secretary of War would have resisted the insertion of an article, that if the price of whiskey should be enhanced by an act of the government, that the enhanced price should be allowed to the contractor. Considering then this contract as one with the government through its functionary, and that the government have by an act of power subsequently to the contract, produced a material burden on one of the articles contracted to be delivered; it seems to me a plain and obvious principle of equity, that they should compensate Mr. Anderson by making good his losses occasioned by their own act. Oct. 24, 1823.

A SPENCER.

*Dr. United States in account current with Elbert Anderson, for subsistence of the Army of the U. States under contract 7, November 1811.*

No. 2.—To amount of casks, barrels, &c. furnished under the contract of 7 Nov. 1811, suspended in former settlement. The same is now charged as a reasonable and equitable allowance under the circumstance of his being called to Washington by the War Dep't. as per letter of Wm. Eustis, 8 Jan. 1812, and as he made his contract of 7 Nov. 1811 applicable (under similar circumstances to J. Byers) to the then exigencies of the country, and as it will fully appear by the said Contract, Mr. Anderson was not

bound to furnish casks or packages ; but it does appear the said casks and packages were furnished, and were necessary for the safe keeping and preservation of the provision called for in deposit, and that the same were made at places and posts where there were no troops or garrisons, as made it obligatory on the Contractor to obey the orders for said deposits, as will be seen by reference to the covenants and conditions of his contract, dated as aforesaid,

|                                      |           |
|--------------------------------------|-----------|
|                                      | 21,486,41 |
| Deduct amount received from deposit, | 7,514,11  |

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\$13,972,30

*Under Contract 25, February 1813.*

No. 1.—To amount of provisions belonging to the Contractor, sold by John Bliss, A. D. Q. M. General, at Sackett's Harbor, and credited by him in account with U. S. for quarter ending 30 June 1814.

114,00

2.—287 bbls hard bread erroneously charged me, as said to have been received from A. Porter 28,700 rations at 7 1-2 2152,50  
also 394 galls. whiskey 12608 3 1-2 441,28

|                                                                      |          |
|----------------------------------------------------------------------|----------|
| 3.—Amount casks captured and destroyed by the enemy as pr statement, | 2,593,78 |
|                                                                      | 1901,11  |

To amount casks and packages lost and destroyed by troops U. S. in descent of the St. Lawrence pr statement,

2904,75

*Note.—This amount of barrels, casks, &c. is charged under the 6th article of the contract and under the condition of the contract allowing an augmented price of the rations.*

4,805,86

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Forward 21,485,94

Forward 21,485,94

4.—To transportation deposit provision from Plattsburg to French Mills by order as paid John & Roswell Waite in December 1813 and January 1814 pr vouchers herewith.

136,43

5.—To additional voucher of transportation from Handford's landing to Williamsville, by order of Major General Hall, pr receipts herewith,

832,87

6.—To general abstract transportation provision from Genesee river, having been ordered for deposit there, and afterwards ordered to Williamsville by order of Maj. Gen. Hall, vouchers herewith

12,303,37

7.—To damages sustained by receiving of Aug. Porter and of captured flour as well as other provisions purchased by orders of General Smyth and by Qr. Ms. Camp, on the Niagara frontier in June 1813, there being an excess of 306, 333, Rations of flour over the number of meat rations at 3 cts.

9,190,14

Note, as the contractor was compelled to receive the above excess by orders of the commanding general and not by the general stipulations of his contract and as it will appear by the receipts for the same it was deposited in various places, and in "bad order" at a distance from the posts of issue, and without sufficient store houses &c. He asks from the justice and equity, of Government, as well as the stipulations of his contract, that the reasonable and equitable allowance be made to him on the excess of flour received. See his remarks in red ink on this subject in his original accounts on file in the accountants department.

Forward 43,948,75



Forward 43,948,75

8. To damage sustained by not receiving the balances officially declared due, for which warrants were issued and certificates given, viz :

\$181 243,57 dated 14 March 1815

56 756,42 " 27 June "

7 389,34 " 10 July "

which balances by the 10th article of the contract, were immediately to be paid, and likewise under a pledge (making a further part of my contract of 25th Feb. 1813,) made by the the Hon. James Monroe, dated 31st of Oct. 1814, pledging that the balances due should be promptly paid on settlement of the aforesaid accounts. See receipts for time of payment, and certificate of J. W. Yates.

10,000

Reserving to my heirs and assigns the right to call for the benefit of such general provision as congress may have made or may hereafter make for the general relief of public creditors who have furnished supplies and received the amount in treasury notes or in notes of local banks which were below specie value at the time and place of payment.

To damages sustained by the augmented price of the Whiskey ration furnished under contract 25th Feb. 1813. Caused by an act of Congress passed 24th July 1813 to take effect 1 of January 1814, five months before the expiration of said contract, laying a duty on stills and boilers employed in distilling spirits from domestic materials during the year 1814, supposed duty being 14 1-2 cts per gallon, amount furnished in said period is 226,045 galls. at 14 1-2 cts.

32,776,52

Forward 86,725,27

Forward 36,725,27

Reserving claim for loss by the anticipated rise of whiskey from the time the law passed, viz. July 24 1813, to the time it took effect, 1st Jan. 1814, amount of gallons furnished in said period is 89193, at       cts.\*

Dls. 36,725,27

*Washington, Aug. 11, 1813.*

**ELBERT ANDERSON.**

*Washington, 18th August, 1823.*

Sir,

On the 12th inst. I had the honor to hand you my accounts, under my contracts, with the war dept. dated 7th Nov. 1811 and 25th of Feb. 1823, for the supplies of subsistence to the armies and troops of the U. States, for the state of New-York and within the Canadas. I have since received from the War and Treasury depts. official copies of correspondence with the heads of those depts. as detailed below, all of which have an immediate bearing on my claims.

I have learnt from a report of a select Committee of Congress, dated 3d of March, 1823, to which was referred on the 3d of February last, the petition of the representatives of John H. Piatt, deceased, and I find it therein stated, that, "the decision, as to damages particularly was a general decision of the War department, establishing a rule for the accounting officers, in all cases of bills dishonored and protested on account of the inability of the Government to pay, embracing all protested bills which the parties had a right to draw."

I think the records of your office, will exhibit no claim of a stronger character than the claim for damages on protested bills. After my accounts and vouchers had

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\* 89193 gallons at 14 1-2 cents is 12, 932,99 making the total loss sustained in consequence of the tax, 45,709,51.

been furnished, claiming a balance of nearly \$300,000, of which a large amount was suspended, leaving a balance of more than \$250,000 due me as officially reported by your department ; yet my drafts for \$200,000 were dishonored and protested.

If Government have ordered protested bills to be paid with damages, as aforesaid, a measure so just will give additional evidence at home and abroad of their good faith and credit, and will not fail to inspire the creditor in future wars and emergencies, with that confidence so essential to the interests and honor of the U. States. Under these considerations, it is due to the respect I owe my own character, and to the solemn regard I have for the welfare of my posterity to make known to your department as promptly as possible, that I claim the damages aforesaid, to the full extent of the usages and decisions of the War Department, and to a complete understanding of my case, I claim all the stipulations of my contracts or the reasonable construction thereof, as have been granted to the most favored of my cotemporaries who have faithfully and truly given an equivalent in services, and have rendered vouchers for the same.

My sentiments and deeply wounded feelings on the subject of protested bills, have been repeatedly and respectfully made known to the Hon. Gentlemen who have successively had charge of the War Dep't. in 1814, & '15 as will more fully appear by letters of 23, 24 and 30 March 1815, &c. to Hon. A. J. Dallas, Sect'y of War, now on file in the War office.

With a view of all the subjects that may be called in discussion, either by private or public examination of my claims, I feel it a sense of duty again to call your attention to the balance due me, and suspended in former settlement for damages grown out of the improper interference of General Wade Hampton on the northern frontier. The interference of Gen. Hampton, with my right before he had *occasion* to call for, or receive a single ration in my district of supply, was a serious injury to me, inasmuch as I returned to the supply by his own request,

and by order of the War Dep't. at a season of the year, viz. December 1813, when it was impossible to meet the supply of a deficiency of bread-stuffs at the posts of Chateaugay and French Mills, without great sacrifices and hazard, and in as much as the failure of the campaign of that year, and the temporary distress of the troops, were attributed to the contractor, by those persons ignorant of the fact, that General Hampton alone was accountable, he having usurped the power and assumed the whole responsibilities of the commissariat, as will fully appear by correspondence now on file in the War Office. Respectable certificates accompanying the claim, estimated the damages at \$20,000. The amount charged by me was only \$14,343.75 of which \$9,843.75 have been allowed, leaving a balance now claimed of \$4500.

In addition to this there is a claim for 505 hides of beeves, slaughtered at Niagara, captured and destroyed, as suspended in statement of differences, amount \$1,767.50-00. This is again claimed under the 6th article of the contract, it cannot be contended, when fresh beef is required, that the hides are not necessary in transporting cattle to the place of issue.

If vessels, carriages, horses &c. although not expressed in the contract, when captured and destroyed, should be paid for by appraisal under the 6th article of the contract, can it be said that the same article, does not provide for the hides of beeves, that have been slaughtered or are on foot at the time of capture? I claim this and the amount of casks and packages captured and destroyed under the aforesaid article, and the general stipulations of my contract, allowing an augmented price of the ration for expense of issue, &c. in the enemy's territory.

After the vouchers and letters, I have the honor to lay before your department shall have undergone a rigid scrutiny, should it be your opinion, that to an eventual settlement of any item, the same shall first be submitted to the Hon. Sect'y. of War, I pray you will have the goodness to allow me a copy of your determination and objections.

that I may have time to reply and place side by side my illustrations. If you will do me the favor to acknowledge the receipt of this letter, and the one of the 12th inst. inclosing accounts,

You will greatly oblige

Your ob't. servant,

ELBERT ANDERSON.

*Late Army Contractor.*

Peter Hagner, Esq. Third Auditor.

*Supplementary account and claims in Equity.*

To amount of casks and packages furnished under contract, 25th of Feb. 1813

25,097,80

Less amount received back for issue, 14,175,90

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10,921.90

To damages on my bills for \$150,000 and }  
50,000, protested, see vouchers and protest }  
on file. \$200,000 at 10 pr. ct. } 20,000.00

To interest at 6 pr. ct. from the 1st of March,  
the time the Contractor had a right to draw to  
1st of June, on 250,000, 3750  
interest at 6 pr. ct. from 1st of June when all  
the services were performed and the provisions  
delivered, U. S. viz : 1st Nov. 6250, 10,000.00

Interest on same from 1st Nov. 1814 to the 

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Forward 40,921.90

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NOTE.—The late Contractor does not think it necessary to exhibit the entire correspondence with the Third Auditor, on the claims set forth, nor the replies thereto, nor the suggestion of 3d Auditor to 2d Comptroller, or the Contractor's answer; more especially as the 3d Auditor has recently and since the commencement and publication of the remonstrance (March 1821) corrected his error of \$10 235,55 as contained in his suggestion to 2d Comptroller, 27 Sept. The Contractor hopes that the 3d Auditor will yet hasten to retract other errors and mistakes in his report and suggestions. And should the 3d Auditor have it in his power now or hereafter to point out any error the Contractor has inadvertently committed in his official accounts or defence, he will not hesitate to acknowledge promptly every error respectfully made known to him.



Forward 40,921.90

14th of March, 1815 the time the balance was  
declared and warrant issued. 5625

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5,625.00

To discount on \$56700 received in treasury  
notes 28th August 1815 in lieu of specie ; pr.  
certificate of Messrs. Prime Ward and Sands  
at 11 pr. ct. 6237

Discount on 188,632,91 received in treasury  
notes 11 Jan. 1816 pr. certificate as above at  
8 47-100 pr. ct. 15977,20

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22,214.20

To transportation flour and whiskey over land  
from Philadelphia, Baltimore and Alexandria to  
New-York during the blockade of the coast by  
the British in 1813, 7939

Less the usual freight by water, 1990

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5,949.00

To balance due, on the interference of Gen.  
Hampton, during the summer of 1813 paid in  
part by U. S. in former settlement, 4,500.00

To 505 beef hides, captured and destroyed on  
the Niagara frontier in Nov. and Dec. 1813 as  
suspended in former account, 1,75000

To 12 1-2 pr. ct. allowance for leakage and  
wastage on the issue of the rations in the de-  
scent of the St. Lawrence in 1813, and one ct.  
pr. each ration, as provided for by the con-  
tract of the 25th of Feb. 1813 as pr. state-  
ment with my accounts in the Comptroller's  
office. ,7 49.6

E. E.

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Dollars, 86,709.7<sup>3</sup>

## LETTER OF APPEAL.

*To Hon. John C. Calhoun, Sect'y. of the Dep't of War.*  
*Washington, 24th of November, 1823.*

May it be permitted for me, Sir, an unpretending citi-  
zen to lay before you, in my own simple language,

and with all possible deference to your better and more practised judgment, the considerations which ought most to operate in the discussion and final settlement of my claims.

In asking the fulfilment of public pledges made solemn by the peculiar circumstances of the country, at the time they were made, I only ask the Government to study its own honor, and secure its own interest. On the inviolate purity of the public faith, reposes the safety of the commonwealth, for unless she observes in the fulfilment of her compacts, a system of enlarged and liberal policy, she can never expect to command, in the hour of danger and in the day of trial, the full and undivided efforts of her people. And the day may come before we are aware, when Northern America may require all the strength and treasure of her citizens to defend the very existence of her political liberties against the deliberate assaults of confederated tyranny.

These are surely considerations which very forcibly urge the necessity and the expediency of applying the most equitable interpretation in the construction of all contracts between Government and individuals. And accordingly I feel assured that in the adjudication of my claims, I shall not suffer for the want of express or specific "assurances."

Had I presented myself at the seat of Government, at the most critical period of the Campaigns, of 1812, 13, 14, I could have addressed myself, as *others* did, to the fears of Government. I could have alarmed them with warnings of anticipated disasters, and have obtained edicts to existing contracts or "assurances" verbal or written to make me good against all emergencies.

But I never will consent to ask the fulfilment of any pledges or the benefit of any decisions, but such as are applicable to every citizen in similar circumstances. Nor do I believe that if all my claims should now be granted, your decision will want any other justification, than the terms of the existing contracts, their stipulations and im-

partial construction ; yet I am free to declare that I will not accept any compensation for damages in receiving depreciated treasury notes in the absence of Gold and Silver which damage to me is upwards of \$20,000, unless the same is extended by a general decision and rule to all the sufferers.

By the rules and usages of the War Department, I had a right to draw for advances three months preceding the expiration of my contract, viz : on the 1st of March, 1814, yet my drafts were not presented until the 27th of October, nearly 8 months after, and then after my accounts and vouchers had been regularly furnished, shewing nearly \$300,000 due me, my drafts for \$200,000 were *dishonored and protested. Interest and damages on protested bills have been granted under a general rule for the settlement of contractors' accounts, and paid in other cases, deemed not more favorable* and I cannot believe interest and damages will be denied me. But, sir, I have been told my case was one of success, and a former chief clerk of your department, has declared that *in the final settlement of my accounts, there was upwards of \$250,000 due me, but I had no damages or extra price for rations, allowed me in consequence of the advances I made.*

If my fortune, and the fortune and credit of my friends were embarked in the service of government in the absence of advances justly due me, at a time when the treasury was empty, and the enemy were burning our dwellings and laying waste and desolate our frontiers, surely it will not be pleaded against me, that I borrowed from banks on my own credit and the credit of my friends for the purposes of government, nor will my presumed profits be placed in bar to my rightful demands, whatever may be said. I can assure you sir, and I know you will believe me, that the actual profits have been exaggerated fourfold, yet the hazard has been great and complicated, the engagements contingent and prospective whilst the exigencies of time place and the number to be supplied were doubtful. Under no circumstances has the profit

been commensurate to that of an ordinary mercantile transaction.

Sympathy for the misfortunes of a debtor is natural and laudable in private life, yet it cannot be denied that it should in some measure be circumscribed in public transactions, because strict justice can only be measured and weighed by immutable and universal Law, and if the generous feelings of our nature are to be thrown into the scale of misfortune, it will in a great measure tend to the justification of every defaulter on the books of the treasury.

These remarks are drawn from me, because it has become almost a rule for the accounting officers to grant to those who are reputed unfortunate, credits which may be denied to the just claims of the solvent creditor. Hence it had become an axiom in public transactions to obtain more money from government as advances than could be offset by official vouchers and credits at the time of settlement.

In a Government emanating from the will and intelligence of an enlightened people, such principles must and will have a tendency to drive away every highminded and honorable man from their service, and leave the treasury open to improvident adventurers. The nation has placed in the heads of department with the advice and consent of the President the highest chancery powers to administer between the creditor and the government, and we cannot but believe that exact and impartial justice will be administered to all; and yet already have our courts taken the solvent debtor under their protection, and allowed offsets to the suits of the U. S. Is not this an evidence that the people in their capacity of jurors conceiving that justice may possibly be denied, step to the relief of the supposed debtor, and thus government who ought to be considered invisible and incapable of doing wrong, are now from the want of confidence in their justice put to their plea and are to be impleaded with the defendants before their own courts and jurors. How necessary is it



then, that this confidence should be safely reposed and justice and equity made the only standard of every decision. When these immortal guides cease to direct the councils of our rulers, the people cease to respect the physical invisibility of government and indignantly shake off their trammels and abandon their allegiance.

I anticipate the reply to these observations, that every person aggrieved will find the halls of congress open and that they are ever ready to hear the pleadings of the sufferers and do justice to the injured ; but is not justice often delayed until the heart sickens ? and the promised relief is postponed session after session, until the body sinks under the mind's hope deferred ! and in some cases, a generation may pass away before relief is administered : but these circumstances shall not deter the undersigned from the trial, and as he has conscientiously done his duty under great emergencies and trying circumstances, so will he, as life may be spared, without fear of popular clamor or private calumny, continue to look with confidence to those universal rules of equity and justice which have carried a great and powerful people thus far to prosperity and happiness.

I cannot be disappointed in the result of my appeal to the 2d Comptroller and the protection of the Hon. Sect'y. of War under my claims of equity and construction of the law and the contract, and for interest and damages on protested bills and delayed payments. Yet there is one claim from the responsibility of acting on, which I voluntarily release them, nor will I complain that it should be referred to that august body for relief, who, no doubt for wise purposes, imposed the tax "to sustain the public credit," on one of the essential articles which I was bound to furnish in a contract made by their minister before the tax was laid. *This claim is one that addresses itself to the best interests and truest policy of an enlightened nation, ever jealous of its own rights and ever ready to redress the wrongs done to its own citizens by its own acts.* Whilst the constitution enjoins in the most solemn manner the most sacred re-



gard to the fulfilment of public faith ; this claim for indemnification to all who have been injured, is one that must ever be acknowledged by the unanimous consent of every man in this community.

Should my efforts to obtain a general act for the relief of all the sufferers under the act of congress, 24th of July, 1813, be unsuccessful, I shall regret it, because many unfortunate claimants have died and left widows and orphans, to whom the relief would be true mercy, and legitimate justice : as to myself I will retire with cheerfulness and continue to teach my children, as my father taught his, that in all circumstances of life, a vigorous mind is sufficient for itself ; to be humble in prosperity, in adversity to be resigned—by an undeviating practice of honor and integrity, and by a determined and useful employment of mind and body we shall obtain the long looked for secret of the alchymist and sage ; independence, health and happiness.

With great respect,

I am, &c.

**ELBERT ANDERSON.**



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## APPENDIX.

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*Reply of the late Contractor to the remarks of the Third Auditor, on the Claims set forth in the Supplementary Account now before the Second Comptroller, under Contract 25th February, 1813, expiring 1st June, 1814.*

### CLAIM I.

*Cask and Packages 25,097 80. Less amount received back for issue, \$ 14,175 90. Balance, \$ 10,921 90.*

The present claim for packages was made with the one under contract 7th November, 1811, in 1815. (See printed Document, 20, 21, and 138 to 149.) Amount, page 167, \$ 13,972 30. This was suspended in the account of differences. The rejection of the claim under contract 25th February, 1813, is in the following words:

“I have considered Mr. Anderson’s claim, and cannot assent to its being allowed; he will, if he thinks himself aggrieved, take the redress of an appeal.” 8th July, 1815. (Signed) A. J. Dallas.

The appeal was to be made, in the first instance, by Mr. Dallas’ request, and consent of Mr. Anderson’s agent, to the decision of the Attorney General; measures were taken, and the case was to be laid before him. But Mr. Dallas departed from the agreement, and placed this veto on the files, leaving it still open, as the President should direct, for the Attorney General’s, or the Comptroller’s final decision. It now divides itself into two questions. 1st. Shall the allowance be made to Mr. Anderson for the sum of \$ 13,972 30 cents, under the head of allowances for extra services, and under the peculiar exigencies of the times when he made these deposits? See requisition, Feb. 25, 1812, and page 31, and the case, page 54, 145.

2d. Shall the cask claim be allowed on its own merits, and as justly due to Mr. Anderson, as a reasonable indém-



nity for property withheld from him for the purposes and use of Government?

This rule would be in accordance with the practice and usage of merchants, and founded on principles of justice and equity; for all writers on natural and civil law expressly say, if A. retains the property of B. that can be ascertained by number, weight, or measure, A. is bound to return the same, or give the party B. indemnification. As to the practice among merchants, if A. goes to B's store, or mill, purchases 100 pounds of flour, and takes B's sack or barrel to carry away the flour, he is bound to return it, or pay its value. So, in case of importation, or purchase of goods, in our own country, where the article is purchased by weight or measure, the vessel, or package to contain it, is a separate charge.

It has been said the United States have not been in the practice of paying for packages, containing rations; no, not if they purchase beef or flour by the *barrel*, as is *now* done by the navy and army, because the proposal and contracts are made *for the barrel*, including its usual contents; in this case, they pay for the contents, in an enhanced price, to compensate for the vessel. The practice of Government, as long as I have been a contractor, since 1808, has been to pay for the package in a separate charge, whenever the officer applying for provision required and receipted for the package. This principle is applied and fixed in numerous cases in my own accounts, and believed to be the case in other Contractor's accounts. Thus it has been acceded to by repeated acts of the Government, under the same forms of contracts, and if the United States intended otherwise, or a different rule, when it became necessary, from the exigencies of war, to retain a *large amount* of packages, they surely would have stipulated that the rations should be delivered with the vessel or package. The Contractor and present claimant, made his proposal and contract with a perfect knowledge of his previous rights, and the usage in existence. The United States received an equivalent in the price of the ration, with this understanding and consideration, that the vessel was the Contractors' after being emptied of its contents. And, after they have reaped the advan-

tage, it would be manifestly unjust not to pay the injured party a reasonable value for the packages retained.

---

## CLAIM II.

*Damages on two bills exchange, protested;*

|                    |                            |            |
|--------------------|----------------------------|------------|
| One for \$ 150,000 | } \$ 200,000 at 10 per ct. | \$ 20,000. |
| Do. 50,000         |                            |            |

The late Mr. Piatt was allowed by the Accountant's Department, in 1816, 10 per cent. on his bills for 210,000 dollars, drawn for money as *advances* due by the Government, 21,000 dollars, as a reasonable allowance for the damages on his bills being protested. See printed Document, 120, 121, 122, & 125. "The fact of a bill being protested, is always considered as of an equivalent damage to the holder, to the amount allowed." It is, in fact, an allowance on its own merits, and is considered as an equivalent for the injury done to the credit and character of the party drawing, and who had a right to draw. The right of drawing bills is established on three principles. 1st. By virtue of a previous understanding by way of an advance. 2d. After invoices or bills of lading are received. 3d. After funds or goods are in hands. The United States, by usage, agree to pay A. in advance, he having given security for the performance of his engagements, it is his right, because he has given a consideration for the capital to be furnished him in advance, by security and by the lowness of his bid at the time of making the contract. If the contractor A. delays the period of drawing his bill until the Government are furnished with the invoice or bills of lading, the United States gain the interest, and have additional security; they surely are doubly bound to pay the drafts. If the contractor A. has not only given his invoices, but actually deposited the goods, with all the vouchers, the United States are triply secured, and the obligation to pay his drafts is as three to one. The right to draw is paramount and exists with all its force, before the right to receive, an invoice, examine the goods, or test the accuracy of the documents, after delivery. My

right to draw was unquestionable, my security was on file, duly approved, of six respectable and wealthy citizens, joined in the bonds for 100,000 dollars. Services performed and accounts rendered before drawing for 263,000 dollars, making 363,000 dollars; and yet my drafts for 200,000 dollars were protested, although presented eight months after my right to draw, and five months after the equivalents had been rendered and received by the authority of Government. The damages I received for the want of these funds, will be seen by reference to my letters, page 101, 102, 103, 104, 105, 106, and 107. In the great necessities and calls of Government, preparatory to a state of war, see letter of the Hon. W. Eustis, Secretary of War, page 31, when my bonds were only 20,000 dollars, yet I am permitted and *directed* to "draw as I make my purchases." The last sentence and words in my expose to supply the Government previous to the contracts being signed, see page 80, contains this express stipulation: "Correct information as to the required supplies for the next campaign, and funds to obtain the means of its execution as early as possible." To show you the advantage the Government reaped by the delay of payment, and failure of these reasonable expectations, held out to me when the contract was made, I will barely refer you to the note, page 107. The Third Auditor, however, has admitted the generality of the decision of the Secretary of War, of 27th January, 1816; it is for you, sir, to apply the soundness of its principles. But, sir, my claim is attempted to be defeated, by saying I am not a Contractor for 1814, and, therefore, do not come under the provision. My contract is dated in 1813, and expired in June, 1814, yet I am not a Contractor for 1814!! Surely the Third Auditor is not serious, after admitting the generality of the decision, to place me beyond the pale of its provisions! The extreme weakness of the plea, had it been made in our inferior courts, by the most petty barrister at such court, I should presume, would cause him to blush for such a subterfuge and weakness before he retired from the bar.

The letter of advice had preceded the drafts, the Accountant's Department had acknowledged the receipt of all my accounts, (see original letters herewith,) and the Superintend-

ent General of Public Supplies advised me on the 14th October, 1814, (see page 100,) thirteen days before my drafts, that "my accounts of deposits had been received and examined, and the persons with whom the deposits were made were held accountable for the same." The deposits, as remaining on hand, 1st of June, it is believed, exceeded 200,000 dollars, and with this acknowledgment that all my vouchers had been received, the deposit accounts exceeding 200,000 dollars, as actually on hand, 1st of June, adjusted to my credit, and other agents charged with the amount, to say I was not authorized to draw, is as strange as ridiculous. What would you think, sir, if A, with a right to draw on B, in advance, should decline drawing until after the invoices and bills of lading were received, the goods in store, and actually transferred to the debit of a third person, and yet his bills be dishonored and protested?

The decision of the Honorable Secretary Crawford is not only general, but embraced the two years when the Government was unable to meet its pecuniary engagements. It would have been preposterous to have included other years in this provision, because, at all other periods, the United States had it in their power to fulfil every engagement. If any distinction is to be made it will easily be seen it is in favor of contracts made and dated in 1813, although expiring in 1814. In 1813 the Government paid in specie, and the price of provisions were at the par of specie; in 1814 the Government paid in paper, and the price of provisions rose to the par of paper. The contracts dated in 1813 required the peculiar protection of Government, more than those dated in 1814. Every person conversant with the times and state of the currency, will attest to the correctness of this position, and its unquestionable justice and equity. But again, if my duties expired on 1st of June, 1814, or had the contract expired 31st December, 1813, the Government still had obligations to perform to a completion of this contract, until all demands, growing out of their default, were satisfied and paid.



## CLAIM III.

*Claim for interest, for not receiving the usual advances, founded on usage; the amount estimated by the number to be supplied, and the aggregate of the preceding quarter, the minimum estimate is taken at \$ 250,000, from 1st of March, 1813, to 1st of June, 1814, three months, at six per cent.* - - - \$ 3,750

*From 1st of June, when all services had been performed, and the provision delivered to the United States, to the 1st November, on \$ 250,000* - - - - 6,250  
 10,000

*Interest on same, from 1st Nov. 1814, at which time my bills were protested for \$150,000 & 50,000, and my accounts filed for \$263,000, to the time the official balance was declared* 5,625

In every contract between individuals and Government, the individual is induced to offer a lower bid, whenever Government, by any stipulation or usage, presents to the Contractor a reasonable prospect of advantage, such, for instance, as the capital or funds in advance of the required expenditure for three prospective months. And if subsequent events turn out to defeat the expectation of the Contractor, by deferring the payment of advances, or, when paid, by paying in depreciated paper, contrary to the expectation of the parties when the contract was made, it would be oppressive and unjust to deprive him of an equivalent indemnification, and for advances which had already accrued and been reaped by the Government, in the low price of the contract

It is said the only true rule of interpretation of contracts with Government is to place them in analogy with individual cases; it cannot be doubted for a moment, that any court taking cognizance of similar cases between man and man would hesitate to grant relief, to the just expectation of the injured party. In the contracts referred to in 1813 and 1814, advances were to be made, and the usage of the Department always held out those advantages to the Contractor throughout the whole of the term contracted for. In the long experience I have had with Government contracts, I know of no exception to this general rule. The exception of the last quarter\* as relied on by the Third Auditor, would be repug-

\* About the time the balance was ascertained to be due the present claimant, March, 1815, the late W. D. Cheever, successor to E. Anderson, received an advance on his last quarter of \$500,000!! Yet



nant to the spirit and meaning of the contracts, for it expressly says, *if, on the settlement of the accounts any balance is found due the United States*, "ALL SUCH ADVANCES OF MONEY shall be a setoff against the account of supplies," &c. and the surplus, if any, paid to the United States immediately after the expiration of the contract, with interest at the rate of six per cent. per ann. until the same shall actually be repaid. If advances were not made on the last quarter, I will simply require, how the Contractor could be indebted to the United States, the surplus, if any, was immediately to be paid on the expiration of the contract—there could be no surplus except on account of advances.

This rule of interest will apply to the United States as well as to the Contractor. The debtor, on the expiration of the contract was to pay interest, and the interest from the 1st of June, until paid, cannot be denied me by any principle of reciprocity and justice. The dignity of the United States did not require a stipulation to pay advances or interest, it was considered they were always ready to pay; but subsequent events, and derangement of the fiscal operations of the Government deprived them of fulfilling their part of the contract. (See my letter, page 101, 106.)

In the supplies required during the late war, within the State of New York, the last quarter was of the greatest importance to the country, and the successful operations of the next campaign, because large deposits, exclusive of the current and general issue, were required to be left on hand to be issued by a new Contractor or Commissariat. (See letter to my successor, page 99, and 20th October, 1814, page 105. On the 16th of May, 1814, orders were given for the Commanding Officer to receive all the deposits on hand on the 1st of June following, which would constitute the Contractor's vouchers. (See page 97, 98.) This was done, and the vouchers furnished and filed in the Accountant's Department as fast as the mail brought them from the frontiers to the Contractor's office in New York; and it was the balance of these deposits that was furnished on the 19th October, 1814, which constituted only 89,000 dollars of the 263,004 53.—See letter Oct. 15 1814, page 103.) The residue had been

ascertained and official balance due me, could not be paid for the want of funds, as alleged.

previously furnished, as will appear fully by reference to the files of the War Office and Accountant's Department. (See page 100.) For my practice was uniformly to send triplicate condensed statements of my accounts, to the War Department, Superintendent General's Department, and Accountant's Department, and constantly urging and requesting the settlement of my accounts. (See letters, pages 43, 54, 98.)

And here let me be permitted to state that the delay in the settlement of my accounts—for you will find, page 108, that my accounts of contract 7th November, 1811, were not settled or reported on until 10th March, 1815—was not only the loss of interest to me, and the deprivation of investing the earning of my contracts, but that this delay lost me the most propitious period of my life, which, under other circumstances might have gained me honors in a department which my country and the Executive considered my qualifications worthy of sustaining. (See letter, page 57.) Can any person think would have declined this distinguished station, if my account had not been hanging up in the Accountant's Department for the term of two past years, and under two contracts; for had I accepted the offer it would have involved me in the complexed situation of compound and voluminous accounts that, in all probability, might have destroyed my peace, and in case of accident to the War Office, ruined my family and friends.

I ask your consideration for this digression, but really hear the Third Auditor speak of delay in the settling my accounts, as a matter of every day's occurrence, is strange, and though he candidly admits they were regularly furnished at stated periods, *they were in most cases furnished every month instead of every quarter*, yet I am to suffer for the default of the tenth article of my contract, which says, no officer of the United States shall impede the settlement of my account. But I was often told the reason of this delay; and the Third Auditor, then chief clerk of the Accountant's Department, may remember the semi official excuse, *other Contractors' accounts are more urgent than yours; we believe you to be correct and solvent, and the balance in your favor, but we have others who are doubtful in circumstances and security, and whom we have reason to believe have more advanced to them than they can offset by supplies furnished.* This is a

guage, in substance, was creditable to the parties who so narrowly watched the interests of the United States, though, it must be confessed, a little at my expense and damage, and opposed to the express stipulation of my contract. (See opinion on this case, and reply on former case of interest, pages 126, 127.)

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#### CLAIM IV.

|                                                                                                                                                                               |   |   |              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|--------------|
| <i>To discount on 56,700 dollars, received in Treasury Notes, 28th August, 1815, in lieu of specie, per certificate of Messrs. Prime, Ward, and Sands, at 11 per cent. is</i> | - | - | 6,237 00     |
| <i>To discount on \$ 188,632 91, received in Treasury Notes, Jan. 11, 1816, at \$ 8 47, is</i>                                                                                | - | - | 15,977 20    |
|                                                                                                                                                                               |   |   | <hr/>        |
|                                                                                                                                                                               |   |   | \$ 22,214 20 |

The Third Auditor says the assurance and decision of the Secretary, dated 11th July, 1815, page 120, which, it is believed, gave to another claimant, James Byers, Contractor for Massachusetts, nearly 30,000 dollars for receiving Treasury notes in lieu of specie, was on the ground of his contract being in a particular part of the United States, where provision could not be purchased without specie. The above assurance was given January, 1815, his contract commenced previously, viz. 1st of June, 1814.

To this it will only be necessary to remark, that the contracts of 1813, '14, were made under a specie currency, and the price correspondingly low. The Contractors for this period (exclusive of the principles of the constitution, which is paramount to any assurance) were, therefore, not only entitled to specie payment on the principle of priority, but on grounds of manifest equity, for they gave the equivalent in the price of the contract. In the early part of 1814, and, it is believed, before Mr. Byers commenced his contract, the first symptoms of depreciation and embarrassment in the fiscal concerns of Government were exhibited, and they were obliged to resort to an issue of paper in the shape of stock and Treasury notes. This circumstance, and the fact, that excessive issues of bank paper in the middle

states, began sensibly to raise the price of provision, and every article of necessity bore a high price in proportion to the withdrawal of all specie to the eastern banks. Hence, a Contractor, in 1814, bid in proportion to the price of provision in the middle states, for, after all, these were the markets that supplied the provision for the east. This will, at once, account for the gradual rise of the contracts to meet the apparent scarcity of specie, and the real and actual depreciation of the superincumbent paper.

Need I appeal to the most ordinary understanding, whether the Contractor of 1813 '14 did not require the protection of Government still more than the Contractor of 1814 '15? And, again, the precious metals were as high at New York as at Boston, except the mere difference of removal, which, probably, never exceeded a half per cent.

The "peculiar state of the troops" of the state of New York, with a vindictive foe constantly menacing her southern and northern frontier, "made it indispensable to supply them; and, as Government could not furnish paper that circulated at par, in that quarter, you ought to be indemnified against the depreciation." The remainder of this excellent letter is still stronger as it concludes; is general in principle; and will apply, word for word, to the present claimant's case. See page 120.

But I have been told, I lack "assurances," and, consenting to receive Treasury notes long after the balance had been declared due, precludes me, and fixes the inadmissibility of this claim. Sir, I feel my Government insulted, if this is meant as an assertion of a principle, or a rule of proceeding, if the fact stated by the Third Auditor be even true. Because you did not repair to Washington during "critical periods" of pending military operations, and alarm the Government by threatening to abandon your contract, and obtain "assurance" that you would be paid in paper, equal to specie, you are estopped from this claim! Because, after a long period of delay, you received Treasury notes when we had nothing better to offer; therefore, you are debarred from the *after decisions* of the Department! Page 120.

The Third Auditor has too much discernment to plead a stop law, or act of limitation, because he must know it would



be derogatory to the honor and dignity of Government, and opposed to the principles of the constitution; and, knowing by his own sense of private rectitude, that conscientious individuals never resort to such unworthy excuses. But, it is to be regretted, that he has, on many occasions, endeavored to impress it on the minds of the appellate tribunal, "*this item or claim was not before made.*"

When I took what the Government had in their power to give, it was in part, and not because my right to future indemnification was surrendered, or waived. The official correspondence will show the reverse of such surrender. I had the constitution as my protector, and I believed, and still believe, the Government will apply every principle of justice and equity to all claimants.

At the time my accounts were settled, in part, the United States were, as now, a sovereign power, and could not be sued, or impleaded before our courts, as a debtor; I patiently awaited the period when her intelligent statesmen would apply relief. Subsequent to the payment of the then ascertained balance, and only by accident, have I become acquainted with the fact of the existence of the general principle, of Secretary Monroe's letter of 11th January, 1815, and Secretary Crawford's general decision of 27th January, 1816. These enlightened Statesmen, seeing the justice and equity of these claims, have admitted the principles. I ask the application in as strong a case as can possibly exist.

In September last, when the claim of interest on the ascertained balance was under discussion (which claim is now fully admitted as legitimate in his last report) the 3d Auditor appears to have anticipated this claim for loss on Treasury notes, and sets forth, that, when the first sum of 56,700 dollars was paid, Treasury notes were believed to be above par, and when the last balance of 188,000 dollars was paid, "Treasury notes were likewise three to four per cent. above par." See page 23. If he stated this, then, as a fact, it would only be necessary to confirm it, and the Honorable Secretary Crawford's principle of repaying the premium will apply. But the certificate of Messrs. Prime, Ward, and Sands, and Nevins and Townsend, (the very best evidence the case will admit of) of the actual value and sales



of Treasury notes at the time of payment, has closed the door to this allegation. The sale, by the parties, of Treasury notes, is not so good and substantial evidence, because liable to corrupt or interested motives, as the records of the books of Messrs. Prime, Ward, and Sands, or other respectable brokers.

Let us see if I have not, at the very threshold of my correspondence with the Secretary of the Treasury, and Acting Secretary of War, reserved all my rights, the Third Auditor's declaration to the contrary, notwithstanding. The conclusion of my letter of 30th March, 1815, page 109, has the following declaration, never retracted or withdrawn. "As a public creditor, who is conscious of having 'rendered some service to the state,' I shall *never* consent, nor do I think you wish it, to have my claims placed in adjustment on terms different from the most favored."

My letter of 12th April, 1815, page 110, says, "But in receiving Treasury notes in payment, it is not to be understood that I am debarred from a just and equitable claim for interest that has accrued for advances made to Government for the subsistence of the army of the United States;" and all the correspondence, including the letters of 16th May, 1815, and 22d August, speak only of one kind of Treasury notes, viz. of the emission under the 8th section of the law of 24th February, bearing interest and *fundable at seven per cent.* To the best of my recollection I never received a dollar from the United States in Treasury notes fundable at seven per cent. and I presume the records of the Treasury will fully establish that fact.

Had I made the offer in May, 1815, it will appear by Mr. Dallas' memorandum, of June 5, and letter of June 20, and 23d August, the payment was declined for want of appropriation. Could I be bound by an offer alleged to be made in May, 1815, by payment in January, 1816?

The Third Auditor has spread the fact on record, that I offered in May, 1815, to receive 6 per cent. stock at 95 of debt for 100 of stock; he should state the whole truth; the offer was made to me by the Hon. Secretary Dallas, the authorized organ of Government, that he was ready to receive offers on those terms for the debt due me, 182,000 dollars.

(See his letter of 8th April, and my closing with the offer 15th May, 1815.) Perhaps it would be more to the credit and honor of the United States, had this fact been buried in oblivion; but as the Third Auditor pleads the offer against me, and if the plighted faith of the minister was now to be redeemed by the nation, the stock should be given to me *now*, the interest to follow the day of consummation, 15th May, 1815, and this would preclude all demands of interest on delayed payment, and loss on depreciated Treasury notes.

### CLAIM V.

|                                                                                                                                                                                              |             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <i>Amount charged for transportation of flour and whiskey over land from Philadelphia, Baltimore, and Alexandria, to New York, during the blockade of the coast by the British, in 1813,</i> | 7,939 00    |
| <i>Less usual freight by water,</i>                                                                                                                                                          | 1,990 00    |
|                                                                                                                                                                                              | <hr/>       |
|                                                                                                                                                                                              | \$ 5,949 00 |
|                                                                                                                                                                                              | <hr/>       |

No stipulation of the contract provides for this payment, but it was expressly understood by the parties, that the contractor must resort to those markets for bread stuffs and liquor, the northern parts of the United States not furnishing an adequate supply: such a provision is thus provided for in his bid, (see letter of 28th Dec. 1812, p. 74, and 6th January, 1813, p. 78;) they constituting the understanding of the parties at the time, and after the purchase was made, notice was given, (page 136,) and advice asked, if insurance should be made against capture, the answer was contained in letter of 13th February, page 137, (see the case, page 133, and opinion, p. 134, 135, 136.) The articles were ordered to be shipped in small parcels, see my letter, Feb. 18, page 137, and this very order deprived the factors of the opportunity to ship, because vessels could not be procured to take in part of freight, and had I procured vessels to take the whole, it would have been decidedly opposed to the order, and they would have been inevitably captured.

The land carriage was therefore incurred. The difference of the land carriage, and that by water, is asked from the equity of the United States: it was incurred for their

benefit, and the act of government in refusing privilege to charter vessels for a whole cargo, necessarily precluded the supply by the ordinary channels.

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### CLAIM VI.

*To Balance due on the interference of Gen. Hampton, during the summer of 1813, paid in part by the United States in former settlement.* - - - - - \$4,500 00

The rule as stated for adjustment of this violation of my contract, was adopted by the Government; that is, by the actual return of the force from the Adjutant General's office, and to allow the per centage and issue. This, although I was ready to go into the proof that the damages exceeded \$20,000, excluded the necessity of proof; but instead of adhering to the principle after it had been acceded to by both parties, they, by virtue of their sovereign will and power, gave me  $12\frac{1}{2}$  per cent. leaving the one cent per ration suspended. It will be remembered, this usurpation on the part of Gen. Hampton, considering the time of year, during its existence, which was the only period calculated to provide meat, and manufacture flour; and when the supply was resumed, the roads and state of the mills on that frontier, greatly embarrassed the contractor. But the truth is, my credit and reputation were greatly injured in the eyes of those ignorant of the military usurpation on the part of Gen. Hampton and the temporary distress and deficiency at French Mills, and the deranged state of the commissariat, were attributed to me, when, in fact, I was removed from all responsibility.

My agents were ready to issue, and myself on the ground in September, a drove of cattle were prepared, and large damages paid to butchers, and others were actually incurred in the contemplated issue. As the Government fixed the principle of  $12\frac{1}{2}$  per cent. and one cent per ration, I claim what was acceded to as the measure of damages, and ask the balance suspended, \$4,500. See page 50, 51, 52, 53, and 56.

## CLAIM VII.

*To five hundred and five Beef Hides, captured and destroyed on the Niagara frontier, in November and December, 1813, as suspended in former account in 1815, - - - - \$1750 00*

This claim for captured property, like that of captured casks and packages, containing provision, is not only provided for by the sixth article of the contract, which says, "all articles necessarily used in transporting provision," &c. The tallow is paid for either in the live or dead animal, because that is "a part of the ration," or intended to be made into soap or candles. A boat, vessel, wagon, horse or ox, is to be paid for by appraisal, if carrying the ration, and used as the means of transporting. Now, I will ask, when the commanding officers require fresh beef, if the hide is not necessarily used "in transporting the beeves?" Does the Third Auditor mean to say, the bullock shall be stripped of its hide first, and then marched to the frontier to be slaughtered? It is not necessary, surely, to say one word more as to this claim being strictly under the sixth article, and for articles necessarily used in transporting the meat ration?

But what says the Third Auditor to the claim under that extensive and general article of my contract, that provides for this among other casualties in the "increased expense of issue in the enemy's country?" If I lose my horse by bad roads, or capture in the enemy's country, am I not to be paid for my horse? The capture of the hides is among the contingencies, and the increased expense of issue in the enemy's country: the Third Auditor is silent on this point. But in this case, I suppose he would call upon me to show that the eastern side of the Niagara frontier, where the capture and destruction took place, was in the enemy's country. Need I state, sir, that the occupation of territory by sudden irruption, or permanent conquest, politically, and according to the laws of war, make it the enemy's country, so long as the invaders possess the ability to maintain it? If the beeves had been on foot at the time of capture, the whole would have been undoubtedly paid for.



## CLAIM VIII.

*To 12½ per cent. allowance for Leakage and Wastage on the issue of the Rations in the descent of the St. Lawrence, in 1813, and one cent per ration, as provided for by the contract, 25th Feb. 1813,*

\$5749 06

“If, therefore, these provisions were taken from deposits previous to the issue, the contractor has already been allowed the 12½ per cent. and one cent per ration, for issue; and if not, he is not entitled to any per centage or allowance for issue.”

This may be good logic, viewed through the medium of the Third Auditor's comprehensive mind. But before he assumes the fact, he should establish it. That the provision came from the United States' deposits that had been charged to me, with the allowance of the 12½ per cent. and one cent per ration, at the time of receiving, he has not shown this fact, although it cannot be forgotten, that in a plea against my claim, for casks captured and destroyed, containing the gross amount of those provisions on this very expedition, he charges me as a set off to this loss, *that I actually had received the 12½ per cent. on the gross amount of the provision put on board the boats, amounting to \$ —, but likewise on the nett amount after the expedition had terminated, \$5,749 06. Page 152.*

At the conclusion of his remarks on this claim now before us, he corrects his former error *so far*, as to say, the whole of the provision was passed over to the charge of the Quarter Master General, making him accountable for the loss; and the nett amount does not appear in the accounts as deposit; of course, the 12½ per cent. and one cent for issue, was not charged by me in former accounts, although my agent, as the Third Auditor now admits, *accompanied the expedition, and issued the same.* See letter after my accounts had been furnished, p. 104, Oct. 17, 1814.

To illustrate the case, I will barely state, that the provision might, *in part*, have been the deposits alluded to by the Third Auditor, and charged to the contractor in “mass,” or “balk,” at other and distant places of original deposits. At Sackett's Harbor there never was a public deposit, until five months after the expedition sailed, although a depo-



site had been ordered at that place as early as December, 1812, and February, 1813. See page 33. In February, 1813, the plan of the campaign was changed from Lake Champlain to Sackett's Harbor on Lake Ontario; hence, as fast as the contractor could collect his stores at the latter place, and before they could be deposited, (to the loss of his  $12\frac{1}{2}$  per cent. and one cent per ration,) they were daily consumed. See letters, April 21, 26, 28, 1813, page 37, 38, 39. A deposit was not made, as no intermediate agent was appointed to receive them, nor store houses provided; hence, all the deposits on that lake, and the *daily purchases*, were thrown in the contractor's store, and were consumed, to an extent to cover all that was formerly the United States', as well as the deposits of the contractor. Hence, when the expedition sailed, in October 1813, the provisions were *truly* the contractor's.

The amount ordered for this expedition was placed on board 30 or 40 boats, and could it be otherwise than that the Quartermaster should receipt for them and be responsible against loss? The provision actually issued was ascertained in the progress of the expedition. The Contractor was then employed in that issue, his principal agent, Mr. Thorne, and four assistants followed the expedition, and issued what is now charged. This receiving and delivering was strictly in accordance with the understanding at the time of making the contract. (See expose, 6th January, 1813, page 80.)

Hence, the Contractor earned the per centage of issue, because it was deposited on board of boats, receipted for, and actually issued.

When he first presented his accounts, in 1814, not knowing how to make this charge, he only made it a contingent charge "for issue in the enemy's country, as stated, in the descent of the St. Lawrence, ——— dollars." This was suspended in the account of differences, and the remark made that it would be taken into consideration in the per centage on deposite. As this was a deposite in fact, but does not appear in the accounts, it will necessarily follow that I am entitled to the credit of this per centage and issue, more especially as it was an actual expense by my agents attending

the service, and within the terms and meaning of my contract "allowing the augmented price of the ration."

I am now about to take leave of the Third Auditor, and have, I think, refuted his objections, and successfully replied to all his remarks. Candor induces me to say the Third Auditor has gone into the examination of the supplementary accounts and claims, as reported to you on the 24th instant, with feelings and views less hostile to my rights and claims than on a former occasion, and with an understanding more likely to elicit truth than might have been expected from the hasty and irrelevant matter unfortunately contained in his former report, as made on my claims in September last.

In the present report, although we may materially differ as to the application of principles that governed the decision, as made in favor of other claimants, yet all must agree that the principles of equity and justice cannot be confined to dates or individual cases; they are as broad as the earth, and as extensive as the Heavens. It is in vain to attempt to confine them to time or space.

I cannot close this subject without remarking that all the facts of service and equivalent are admitted, or not denied, and my vouchers correct and valid, with the only exception of the small claim of 114 and 136 dollars, in account furnished in August last; and those, in the opinion of the Third Auditor, suspended for further explanation. My claims, thus admitted as genuine and true, but "not admissible under the regulation of his Department," it only remains for me to request the examination of the case by the Hon. Secretary of War, and ask his decision on the claims in equity; and of you to enforce the law, and apply the decisions of the Department that have governed in other cases.

With considerations of high respect,

I remain your obedient servant.

ELBERT ANDERSON,

*Late Contractor.*

*Washington, June 30, 1824.*

RICHARD CUTTS, Esq.

*Second Comptroller, Treasury Department.*

*The following questions have been submitted to me for my opinion, by Elbert Anderson, Esq. late Army Contractor.*

1. Whether he is justly entitled to the customary damages on two bills drawn by him on the Secretary of War, in Oct. 1814, amounting to 200,000 dollars, and protested for non payment, inasmuch as his vouchers and account current had been previously furnished to the War Department, and he was entitled to draw?

2. Whether he be entitled to indemnity from Government for loss on depreciated Treasury notes, which, when paid to him, were \$ 22,114 below par value?

In answer to the first question, I am of opinion that Mr. Anderson is clearly entitled to the customary allowance of damages, according to the law merchant, and which are part of the law of England, upon these bills protested. "The universal practice and laws of nearly the whole civilized world has settled it as a just and equitable principle, that the interest and damages should follow a protested bill." This was the observation contained in the report of the select committee on Mr. Piatt's claims, and it was well founded in justice and in law, and I cannot hesitate to believe that the Government of the United States will at once perceive, acknowledge, and admit the obligation of these rules and usages which are prescribed to individuals in their dealings with each other.

In answer to the second question, I am of opinion that Mr. Anderson is entitled to a fair and just indemnity against the depreciation of the notes in which he was paid. The Government were bound to pay in specie. It is the principle of the Constitution that debts are to be paid in gold and silver, and if paper be substituted, it ought to be of equivalent value—nothing can be clearer or more persuasively just than this principle. If then, Mr. Anderson was paid in depreciated paper, because the Government had not, at the time, any thing better to offer, they are bound, in conscience, to make good the difference between the current value of the Treasury notes, when paid, and the par value. It would not be in my power to avail myself of better authority on this point than the letter of Mr. Monroe, of the date of July 11, 1815,

in which the principle I have stated is clearly and forcibly admitted. "It seemed to be just (he observed) that as the Government could not furnish paper which circulated at par, the party ought to be indemnified against the loss arising from the depreciation."

JAMES KENT.

*New-York, 2d June, 1824.*

*Dr. Thomas Bailey  
N. Y.*



*Judge Platt's Opinion on the Claims of Elbert Anderson.*

Mr. Anderson having submitted for my examination his contracts with the United States, bearing date the 7th day of November, 1811, and the 25th day of February, 1813, with the accompanying documents and correspondence—I have considered the questions which have arisen between him and the accounting officers of the Government : and applying the rules by which justice is administered, in the Courts of Law and Equity, my mind has been led to the following conclusions, viz.

First. The claim of Mr. Anderson, for extra expense of transporting flour and whiskey, over land, from Philadelphia, Baltimore, and Alexandria, to New-York, during the blockade of the coast in 1813.

The contractor had an undoubted right to procure his supplies from those places : and he had an election to send them by land, or by sea, at the risque of the United States, as to capture by the enemy. Two facts, are certain : 1st. That transportation by land was more expensive than by sea ; and 2d, that the hazard of capture was imminent at sea, while that risque was merely nominal by land. It is therefore apparent, that the contractor voluntarily submitted to a certain and heavy additional expense ; whereby he saved to the United States a sum equal to a premium of insurance against capture by sea, which probably cannot be estimated at less than five times the amount now claimed by the contractor. That he acted prudently, and conferred a certain benefit on the Government, in executing that part of his contract, cannot be doubted : and his claim for indemnity, that is for the difference between the expense of transportation by land, and by sea, appears to me to be within the equity of the stipulation, that the United States should bear the loss by capture.

Second. The claim for a reasonable allowance for casks and boxes, containing the component parts of the rations.

The contract is explicitly for *rations*, by weight and measure ; to be “furnished” and “issued” by the Contractor : the *casks* and *boxes* were used for the convenience of the Contractor merely ; they were not indispensable to the fulfilment of his contract ; and the rations *being issued*, the casks and boxes were the property of the Contractor. They were mere vehicles of transportation, and belonged to the Contractor as much as the carts and oxen, or boats, used in carrying them. If the contract had been for barrels of flour, beef, or pork, and hogsheads of whiskey, and boxes of soap and candles, the usage of trade would require a different construction.

I am therefore of opinion, that, for all such casks, vessels, or



boxes, detained or converted by the Government, or its agents, Mr. Anderson has a just and legal claim.

Third. The claim for casks and boxes, containing rations, and which were captured or destroyed, &c.

That this claim is well founded, under the 6th article of the Contract of 25th February, 1813, seems to me so plain as to defy the ingenuity of a casuist to raise a doubt against it. Were those casks and boxes "necessarily used in transporting the articles intended to compose rations, to be issued under this contract?" If so, the stipulation is express, that they shall be paid for by the Government, at their appraised value.

Fourth. The claim for damages in being compelled to receive provisions of Augustus Porter, &c.

It is very evident, that the terms of the Contract did not require Mr. Anderson to accept those provisions; and that they were imposed on the Contractor against his will, and contrary to his interest. The United States gained by it, at his expense; and I am unable to perceive any valid objection to this claim.

Fifth. The claim for extra compensation for removing provisions, by orders of General Hall and General Dearborn, respectively.

That the expense was greatly enhanced by those special orders, is certain; and, it appears to me, that this claim is well founded, on the equity and spirit of the stipulation contained in the 3d article of the Contract of 25th February, 1813. But, supposing there had been no express convention for such a case; I can perceive no reason to doubt the justice of the claim, on general and acknowledged principles of equity. Having purchased, and being in progress of transportation, under an order to deliver at a certain post, that order was countermanded; and the Contractor was required to deliver at another post. Who could doubt as to the rule of justice, if such a case had occurred between private individuals?

Sixth. The claim for tax imposed on whiskey, after date of the Contract.

If this were a contingency depending on *accident*, or the act of a *foreign Government*, it would have been among the hazards incident to the Contract. So, if the Contract for whiskey had been between two private individuals, both alike subject to the sovereign power of laying taxes. But, where the contract is with the Government, on whose *volition* it depends, whether such tax shall be imposed or not; good faith requires, either that the Government should abstain from laying such tax, or that it should indemnify the Contractor for all damages sustained by reason of such *ex post facto* imposition. Suppose the contract price, and fair value of whiskey to be 25 cents per gallon:

and then suppose the Government, which contracted at that price, should impose a duty of 25 cents per gallon : and should still insist on the fulfilment of the contract, on the original terms : is it possible to doubt, that such conduct would be an outrageous breach of faith ? The present case differs only in *degree*, and not in *principle*. In this case, a tax of 14 cents per gallon was imposed : which necessarily enhanced the price of that article to an equal amount. And not only so, but, in effect, that amount was taken from the pocket of Mr. Anderson, and placed in the Treasury of the United States. What he *pays* extra, the other contracting party *receives*. To refuse compensation for the operation of this tax upon the contract, would be as unjust, and as arbitrary, as to pass a law that Mr. Anderson should be bound to receive 14 cents per gallon less than the contract price.

My respect for the Government of my country will not permit me to doubt of the success of this appeal to its justice.

Seventh. The claim for interest on balances due the Contractor, and where payments were deferred, &c. and for damages on protested drafts.

The 9th article of the Contract provides that Mr. Anderson “ shall render his accounts for settlement, *at least once in every three months.*” He had a right to do so, as much oftener as he pleased.

The 10th article expressly stipulates, “ that if any balance shall, on any settlement of the accounts, be found to be due to him, *the same shall immediately be paid.* And that *no unreasonable or unnecessary delay*, on the part of the officers of the United States, shall be given to the settlement of the accounts,” &c.

There is no *express* stipulation that the Government should make advances of money, before the settlement of accounts ; but the terms and scope of the 10th article plainly imply, that such prospective advances were contemplated by the parties ; and the usage of the Government justified such an expectation.

The question on which the justice of this claim depends, is, whether the Government was in default ? If the balance in favor of the Contractor was struck and admitted, and payment still refused, it would seem to be an unquestionable dictate of justice, that interest should be allowed from the date of such refusal. So, if there was any “ *unreasonable or unnecessary delay,*” in settling his accounts, the Government would thenceforth be in default, and ought to pay interest. The only use of an *express stipulation* to pay interest, in governmental contracts, is to settle the *rate* of compensation for the use of money, and to designate the time and place of payment. And where the Govern-

ment acknowledge a debt, and refuse to pay interest, for money withheld from its creditor, it is as absolute a breach of faith, as it would be to refuse interest on the National Funded Debt. In regard to the protested bills, where there was an acknowledged right to draw, I can see no reason why the Government should not repair the injury by the same rule, as is prescribed for a like injury between private individuals ; which allows not only a legal rate of interest, but such sum as will cover all ordinary damages, occasioned by disappointment, loss of credit, and consequent embarrassment. It is commonly liquidated at 20 per cent.

Eighth. The claim for loss on depreciated Treasury notes.

That the true construction of the Contract is, that Government should pay in specie, or in something equivalent, is too plain to be questioned. Has it done so ? No ! Public exigencies compelled a departure from the terms of the Contract ; and the contractor was under a necessity of receiving Treasury notes, at par ; when, in truth, they were available to him at no more than 86 per cent. of par value. The public necessity is now removed, by an overflowing Treasury ; and the question of morality, justice, and honor, now is, whether the Contractor shall in fact receive his stipulated reward, where he has been in no default, and has faithfully performed his contract ? or, shall he lose 14 per cent. of his promised reward, because the Government was unable, at the time, to give him any thing better than Treasury notes ? It seems to me, that, to doubt of the success of this claim, would be an affront to the Government of the United States.

Ninth. The claim for hides captured and destroyed on the Niagara frontier, in November, 1813.

These were hides of cattle driven by the Contractor to that frontier, to supply fresh beef rations. The 6th article of the contract stipulates that "all losses sustained by the depredations of an enemy, in articles intended to compose rations, &c. *as well as in other property necessarily used for transporting the same,*" shall be paid for by the United States.

Assuming that it was a reasonable and proper execution of the Contract, to drive the cattle *alive* to the station required ; the question presented is, whether the skins were "*necessarily used in transporting the same* ?" I see no ground to contend, that the hides were not the property of the Contractor ; and, in every view, I am of opinion that this claim is well founded.

JONAS PLATT.

UTICA, 24th November, 1824.

U. S. War Dept.  
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# REPORT

OF THE

HON. JOHN C. CALHOUN,

SECRETARY OF WAR,

ON THE CLAIMS OF

**ELBERT ANDERSON,**

*Late Army Contractor;*

AND HIS

**REPLY.**

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NEW-YORK:

CLAYTON & VAN NORDEN, PRINTERS, 64 FINE-STREET

1825

## REPORT.

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*Department of War, 12th August, 1824.*

SIR,

I have examined with as much care and attention, as my other engagements would permit, your claims under the contracts of the 7th November, 1811, and 25th February, 1813, and herewith make known to you my decision thereon.

In order to be as brief as possible, I will refer to the claims as stated and numbered in the remarks of the third Auditor, without stating them at length.

Number 2, under the contract of 7th November, 1811, and 2 and 3, under that of 25th February, 1813, and one in the supplementary statement, all embrace the same general principle, and will be considered at the same time. The claims embraced in these numbers are for barrels, casks, &c. containing provision placed in depot, for which you claim compensation, and which has not been allowed by the accounting officers. This claim appears to me to be in its nature such as to be strictly embraced in the power of the accounting officers, and not referable to the decision of this department (*a*) ; but as the second Comptroller has taken a very different view of it, I have examined it with care, and am of the opinion, that there is nothing in it that would authorize its admission.

The order to deliver provisions in depot, seems necessarily to comprehend the barrels and casks, &c. in which they are contained ; and such, I understand, has been the construction under the old contract system, from its commencement to its termination in 1819 ; and which, at this late period, ought not to be changed, even if there were reasonable doubts, as there are not, as to its correctness. It is to be presumed, that the invariable construction of contracts, under a system so long in operation, would be known to the contractor as well as to the



## REPLY.

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(a) "This claim appears to me to be in its nature such as to be strictly embraced in the power of the accounting officer, and not referable to the decision of this department."

We should naturally presume, that, after this declaration, the honourable Secretary of War would have referred the case back to the Comptroller's department, from whence it came; yet we find him acting in the case, and giving his opinion against the claim; and this power is assumed in contradiction to legal advice, and the legal adviser of the President, I mean the Attorney General, who says to the President, in his letter of July 27, 1824, in reply to the President's call upon him for his opinion on this very case, as follows:—"that he (the President) had nothing to

government, and the acquiescence in it of both may be fairly presumed. Nor do I conceive the claim to be better support-

ed by equity than law. (b) Under the contract of 1811, you were bound *to issue* provisions in the State of New-York to the troops, at  $13\frac{1}{2}$  and 14 cents a ration, and under that of 1813, *to do the same*, at 14 cents 8 mills, and 17 cents 5 mills per ration. It is manifest under these contracts, if the government had thought proper to give the order, you would have been compelled to perform the *double duty of purchaser and commissary of issue*, without other *compensation than that stipulated in your contracts* for the price of the ration. The actual operation, however, under your contract, took a different direction, and one, it is considered, far more favourable to you. Instead of ordering you to issue the provisions without putting them in depot, as might have been done, you were directed to

do with the settlement of public accounts, either in the form of direction to the accounting officers, *a priori*, or revision and revisal, *a posteriori*; that his interference with this business, so far from being required by law, would be a usurpation on the part of the President, which the accounting officer would not be bound to respect.”\*

(b) We have shown that it was usual to pay for casks, &c. when demanded. We are now told that it ought to have been made *a condition* by us in the original contract. Suppose A should have been in the habit of receiving compensation for packages he shipped to B a customer, would A need a specific stipulation, to enable him to collect the charge for packages, already acknowledged by usage of trade? It was for the *Government*, then, to say, that they would not in future pay for casks and boxes.

\* In addition to other and weaker reasons against the payment of this item, as set up by the accountant department, it was urged, that a bar to this claim had been recorded, meaning the codicil attached by Mr. Munroe to his general decision of 13th October, 1814. Had the advocates of this bar reflected on the nature of the interdiction, as inserted on the original document, it would have been plain to every understanding, that the interdiction was *ex post facto*, and therefore illegal; my claim for the payment of casks existed with all the force of statute law, and the sanction of cotemporaneous dates of contract with the one referred to. In this stage of the discussion, the present claimant informed the Hon. Mr. Calhoun, Secretary of War, that he had mentioned the circumstances to the President of the United States, whose interpretation he had requested, as the letter of 13th October, and the interpolation, had both been executed by that officer, when he was Secretary of War. The President, ever anxious to do justice, calls on the Attorney General to give his *opinion* on the case, *after carefully examining all the contracts, letters, usages, &c. &c.* But the good intentions of the Executive were thwarted, and he was told as above stated, and a copy of the Attorney General's letter was sent to me from the War Department. Although the President of the United States, (who, I humbly think, is bound to see the laws executed,) could not interfere; yet it was plainly admitted in substance to me, that the Secretary of War had the authority which was denied to the Executive. [See letter of Attorney-General.]

place them in depot, (c) and were allowed the contract price per ration, upon a calculation, computing the number of them contained in the provisions, thus delivered in the bulk, without incurring on your part the hazard, the waste, and the expense of making *the issue* ; and you were allowed afterwards for issuing these very rations, (that is to say, for performing the commissariat part of your duty, which you might have been compelled to do under your contract, without charge to the government,) the very liberal compensation of  $12\frac{1}{2}$  per cent, and one cent a ration on the amount issued, a compensation for exceeding the value of the barrels, casks, &c. It cannot be questioned, under this view, that the order for deposit, without allowing you for the casks and barrels, &c. was far more favourable to you, than the order to issue, leaving them in your possession. Your supplementary charge, No. 7, strongly confirms this opinion ; you charge  $12\frac{1}{2}$  per cent. and one cent per ration, as clear profits on every ration issued, while your functions as contractor were suspended by Gen. Hampton ; and admitting the correctness of the charge, you must allow that the profit on the issue greatly exceeds the value of the casks and barrels, &c. in which the provisions are contained. It is not my intention to censure the actual operation under your contract. It no doubt received the direction which those who had the authority at the time deemed expedient ; but it is no less certain that the direction was highly



(c) Mr. Secretary Calhoun is evidently embarrassed in his arguments, and his reasoning is founded on a misconception of the contract. The moment a deposit was ordered and completed, either under the old or new contracts, the United States incurred the additional risk and the after expense of the new issue or commissary commissions. The only difference between the old contracts and that made with the present claimant, which difference seems to have escaped the penetration of the honourable Secretary, is, that in the contracts prior to those of 1812, it was a voluntary act on the part of the Government to call for deposits, at fortified places and posts, "in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months;" but under the stipulation in subsequent contracts for the state of New-York and its frontiers, it was *obligatory* on the Government to order deposits; but in *either case*, the United States, in transferring the deposit back, was liable to the contractor for the twelve and a half per cent. and one cent per ration. [See last note to this reply, and Mr. Secretary Eustis' letter of Nov. 27, 1812, page 32, printed document.] "Thus delivered in bulk (continues Mr. Calhoun) without incurring on your part the hazard, the waste and the expense of making the issue; and you were allowed afterwards for issuing these very rations, that is to say, for *performing the commissariat part of your duty, which you might have been compelled to do under your contract, without any charge to the government.*" Where the Secretary had found in either of my contracts a clause or stipulation that would bear such a construction, is a mystery to me. Surely none of his predecessors claimed such a construction. First, he intimates, that the delivery in bulk *without* the hazard and waste of issues "was enough in all conscience;" "yet you afterwards was allowed for issuing these very rations." First, I was to deliver in bulk, and second, to issue these very rations gratuitously. Now, how could the waste and expense of *issue* be incurred or claimed in the first instance, although it was just and proper in the second? Mr. Secretary Calhoun has confounded the cask and package *claim*, with the commissariat allowance, which I think he did not comprehend, for he again





says, "the very liberal compensation of twelve and a half per cent. and one cent a ration on the amount issued, a compensation far exceeding the value of the barrels, casks," &c. "It cannot be questioned, under this view, that the order for deposit without allowing you for the casks and barrels, &c. was far more favourable to you than the order to issue, leaving them (the casks) in your possession." The conclusion from all this reasoning, although I confess there is great ambiguity in it, would be, 1st, that I had received the commissariat allowance when the provisions were deposited in bulk without the risk and waste of issue; 2d, that this was compensation enough for the loss of the packages; and, 3d, that when I did issue, which the government could compel me to do without compensation, I still received the "very liberal compensation of twelve and a half per cent." &c. I am satisfied the true merits of the question have not been understood by the Third Auditor or the honourable Secretary. They both seem to think that I have had an allowance of twelve and a half per cent. and one cent on all the rations as contained in all the casks and boxes delivered by me to the United States. Now, the casks and boxes which I claim were not "left in my possession," or emptied of their contents by me, nor has the United States incurred, except when transferred to my successor, the twelve and a half per cent., &c.

It however will be seen, by reference to the contract, dated February 25, 1813, that I had the right to issue all the provision deposited by me, and receive the commissariat allowance. In that case, the casks would have been left in my possession. This waiver of my rights was much to the advantage of the government, as the campaign could not have been prosecuted without the deposit, and the price was lower than the subsequent contracts.

The question then is simply this—that I claim for casks, barrels and boxes, which have been captured and destroyed, or taken by orders of the government and delivered to other agents; and if the government have not charged those casks and boxes to my successor or agents, it is not my fault—they have not allowed me for the casks, or the twelve and a half per

favourable to the contractor. (*d*) Against this view it is objected, 1st, that the value of the casks, barrels, &c. has been in many instances allowed, both to yourself and other contractors ; and 2d, that it was allowed to a large amount to Mr. Byers, by the special decision of Mr. Monroe, then Secretary of War. It is a sufficient answer to the first of these objections, to state, that the allowance has been confined to provisions delivered to officers on the march, and being so confined, weakens the claim, for the value of the casks, barrels, &c. of provision *placed in depot*, which is your claim. It is, however, proper, I should observe, that there is no just foundation, in my opinion, for the construction which allows the price of casks and barrels containing provisions, delivered to an officer to be delivered on march. The construction of the contract which allows it, was probably originally accidental, without reference to the principle which ought to govern. The case is similar to that of provisions delivered in depot ; and the reasons presented

cent. commissariat allowance : all these perquisites have been given to my successor.

But my "presumed profits" are to be a set-off to my demand for the packages. The "actual operation" of the principle would be, to deprive A. of his property, on the presumption that an equivalent had been rendered, under other articles and distinct stipulations of his contract. Can the merchant plead that the factor has made favourable commissions, and he therefore will not pay for the packages which contained the goods? Will the belligerent nation plead that the neutral had a free and profitable carrying trade, therefore she will not indemnify for unlawful seizures and confiscation?

(d) "It is not my intention to censure the actual operation under your contract; it no doubt received the direction which those who had the authority, at the time, deemed expedient; but it is no less certain, that the direction was highly favourable to the contractor."

If the honourable Secretary had calmly taken a retrospect of the contracts of more recent dates than mine, when the prices had fallen one half on all articles of labour and subsistence; and if he has scrupulously examined the direction they took, as one loving economy and strict accountability, he might still be made to believe that those executed in war would be preferred over those made in times of profound peace.

But to plead the misfortunes of adventurers and defaulters, that have followed the Department since the war, would be as unworthy of me, as it would for a just and generous government, to urge the foresight, industry, prudence, and economy of a creditor, as a set-off to his just claims. But to the facts.

The contract price and the commissariat principles were fixed in the early part of January, 1813, in full and deliberate consultation with the then President, Mr. Madison, Mr. Monroe, acting Secretary of War, and the then Secretary of the Treasury. [See page 77 to 81 of printed documents.]

Need I appeal to the candour of every citizen conversant with the times, to say this was a favourable contract for the United States? need we compare *the price*, the strict accountability, of this contract in the state of New-York, with

against the latter, are equally applicable to the former ; (e) but as the practice has been otherwise, I feel no disposition at this late period to disturb it.

As regards Mr. Byers' case, if it were even in point; standing alone as it does against the practice of the Department, and the fair construction of the contract, it could not be recognised, particularly as it was made during the period of the late war, when there was a great pressure of business upon the head of the Department, and consequently very little time for due reflection. But I do not consider it to be in point. It seems to me clear, that the original decision of Mr. Monroe was rather upon the equitable claim of Mr. Byers, arising out of a previous understanding between him and the Department, in relation to his contract ; and, limited expressly as the original decision was afterwards by Mr. Monroe himself, there can be no doubt but that his object in making the allowance for casks and barrels, &c. was intended to cover this equitable claim, but whether correctly made, even in his view, it is not for me to say.

Number 3, for barrels and boxes containing provisions captured, is analogous to the claim just considered, and as I am informed by the accounting officer, though there have been one or two instances of small amounts allowed,\* that the prac-

\* I reply in the words of the contract, and exclusive of the admission of the Secretary, that captured casks have been paid for by the government ; it must be admitted the casks, boxes, &c. were "necessarily used in transportation."—Page 85.

Sixth.—"That all losses sustained by the depredation of an enemy, or by means of the troops of the United States, in articles intended to compose rations, or to be issued under the contract, being the property of the contractor, as *well as in other* property necessarily used in transporting the same, shall be paid for at the contract price of the rations or the component parts, *AND at an appraised value of the other articles.*"



those of the west, the south, or the middle states, either by contract or commissary, under any administration? \* Suffice it to say, it was to the entire satisfaction of the government; and to speak of "a direction highly favourable" on any ground, either of justice or equity, if the *supposition* were *fact*, is not to the purpose, nor does it comport with the dignity of the United States.

(e) The principle is admitted by the honourable Secretary of War himself, that to pay for casks, &c. delivered to troops on the march, was in *usage and practice*, and that the *case is similar for packages for provision in depot*. After this admission, needs my claim a greater argument or advocate? If I wanted any other, the general principle is admitted by Mr. Monroe in his decision of 13th October; and the codicil afterwards made to that decision, cannot act upon me; it would be *ex post facto*; it can only exclude subsequent contractors.

\* The scarcity of provision, and consequent enhanced price, and the difficulty of transportation overland during the war, created great expense in provisioning the army. But, wherever the commissary system of purchasing was substituted for the contract, (and in many cases the contract could not be obtained,) the cost of a barrel of flour often exceeded, before it was issued, fifty dollars per barrel; thirty cents for the flour rations alone. In the "state of New-York, and on its northern and western frontier," the price of flour to the United States was from seven dollars and fifty cents to fourteen dollars per barrel, or in the average of three years the barrel of flour did not exceed thirteen dollars, or seven and a half cents the ration; and the whole constituent parts of the ration during those periods fluctuated from fourteen to twenty-two cents, including transportation to places of deposit, and commissariat allowance for wastage. To places of issue the general cost of transportation did not exceed ten per centage, or two cents per ration on the first cost. Now the archives of the war office will show an expense incurred as late as 1818 and 1819, of transportation, of fifty-six cents each ration, or sixteen dollars and fifty cents per hundred; a ration for the soldier, and the materials to contain them, being estimated at  $3\frac{1}{2}$  pounds each. It is proper, however, to remark, that the next year the price was reduced to three dollars and fifty cents per hundred, or nine cents two and a half mills per ration; about fifty per cent of the original cost of the rations.

tice has been not to allow such claims ; I am of opinion that it ought not to be allowed for reasons already assigned.

Number 7, is a claim for damage sustained in receiving an excess of the flour part of the ration from a deposit made by Augustus Porter, the previous contractor, and provisions captured from the enemy, which were damaged, and which you state you were compelled to receive by order of the commanding General. Against this claim it is objected by the Third Auditor, that your agent acknowledged the receipt of the provisions without mentioning any thing of their being damaged, or making objections as to the inequality, as to the flour part of the ration complained of ; and that they were passed on his receipt to the credit of the former contractor, and to your debit, after deducting  $12\frac{1}{2}$  per cent. for wastage, and one cent per ration for issue. Against which you object, that the order of General Dearborn was peremptory, and left your agent no discretion in receiving them ; and that you protested against the order as soon as you were apprized of it, and claimed "suitable and equivalent arrangements for those sacrifices which you had to make in supplying the deficiency in parts of rations." I have turned to the only order of General Dearborn that I can find, which does not appear to me to be any more than a request, that Mr. Thorne, your agent, should receive the provisions ; and it appears to me, that his receiving them, under the letter of General Dearborn, without making any objection, fairly authorizes the contractor to be charged with the same ; besides, it does not appear that you have sustained any damages by the flour not being in a good condition. (f) There is no evidence to show that the whole of it was *not issued*. In addition to these remarks, I understand by your letter of 15th July, 1813, to General Dearborn, that your objection was to being called on to fill the deficiency of parts of rations left in deposit by Judge Porter, and that your claim for damages was confined to that particular. Even were the claim in that view to be well founded, it would still be necessary to prove, before it could be allowed, that you sustained damage *by supplying the deficiency of the parts of rations*, and the amount of such damages.

(f) "I have turned to the only order of General Dearborn that I can find, which does not appear to me to be any more than a request that Mr. Thorn, your agent, should receive the provision; and it appears to me, his receiving them under the letter of General Dearborn, without making any objection, fairly authorizes the contractor to be charged with the same; besides it does not appear you have sustained any damage by the flour not being in a good condition", &c.

Messrs. Thorn and Allen both have testified [See pages 156, 157 and 159] to the damaged state of the flour. Mr. Allen says, "Mr. Anderson lost in quantity; but in quality, it really was not worth half-price."



The request of the commanding general was, and ought to be, sufficient for the contractor's agent to obey. Before me now lies Porter's letter, requesting General Dearborn to issue his order; and General Dearborn's *order* (for so it is) at foot of Porter's letter. Then again, let us follow up General Dearborn's order to fill up the measure of this deficiency of parts of the rations, dated eleven days afterwards, and subsequently my letter of July 15th, page 25. And then let any man say, if the times, the critical situation of the army, or a proper sense of what was due to subordination, or the will of the commanding general, could have permitted me or my agent to act in disobedience.

(COPY.)

*Fort George, June 14, 1813.*

SIR,

I have on hand at different places on this frontier, viz. at Williamsville, Buffalo, B. Rock, Manchester, Fort Niagara, and this place, the following articles, composing the rations, which I wish to deliver over to the government as deposits under my contract, to wit:

|         |         |          |
|---------|---------|----------|
| 105,266 | rations | meat,    |
| 344,743 | do.     | flour,   |
| 250,760 | do.     | whiskey, |
| 6,000   | do.     | soap,    |
| 458,760 | do.     | candles, |
| 9,500   | do.     | vinegar. |

You will, sir, have the goodness to make an order for the receipt of these articles.

And oblige, sir,

Your humble servant,

(Signed,)

AUGUSTUS PORTER.

*Maj. Gen. Dearborn.*

*Mr. Thorne,*

SIR—You will please to receive the within specified articles on account of the United States.

Yours, with respect,

(Signed,)

H. DEARBORN.

*Head Quarters,  
Newark, 14th June, 1813.*



(g) Number 3. Amount claimed for damages which you allege to have sustained by not receiving in due time balances reported in your favour, under your contract of February, 1813. I learn, on inquiry, that there are no instances in which interest has been paid in similar cases, and as the general principle of not allowing or receiving interest in the settlement

Head Quarters, Niagara, June 26, 1813.

The Contractor or Agent,

SIR,

You will, without delay, take effectual measures for having a supply of pork and other articles now on hand necessary to complete the rations, transported from the nearest deposit by the contractor, or the public teams, to this place by land.

(Signed,)

H. DEARBORN.

The contract did not require the contractor to receive these provisions even in equal proportions of the component part of rations ; hence it would follow that the requisition to my agent "was not authorized by the contract," and Secretary Crawford's decision expressly provides the remedy : he says the accounting officer shall allow "all claims, arising from loss sustained by requisition not authorized by the contract." The government (perhaps to secure an oil-set to advances made to a previous contractor) found it prudent to receive the rations in unequal parts, there being an excess of 306,333 flour rations. The damage I ask, is plainly seen to be the difference between the price the United States paid, and the price charged to me, viz.  $3\frac{1}{2}$  cents each. Suppose the government had determined by a violation of contract, to supply all the flour rations and compel me to deliver the other component parts, would not justice and equity, if I even consent to this violation, give me the difference between what they paid and the amount charged me ? This is the rule when the contractor is in default of supply : the United States purchase the rations, charging the contractor with the purchase price, and crediting him at the contract price. Evidence is on file, of the want of store-houses, and the damaged state of the provisions. [See this case, page 154.]

(g) Numerous cases are on file of the Department as to the payment of interest. Mr. Cheever, my successor, received \$15,000 interest, Mr. Piatt received on his settlement \$12,000 for premium and interest, &c. &c. The Secretary, however, refers this to Congress. [See my remarks, page 127—documents, page 101 to 131.]

of government accounts, is fully established, and has been in operation since the commencement of the government, I do not feel myself authorized to extend it to any case not fairly authorized by well established precedents. In this case, the reason why the balances were not paid, appears to be that there was no appropriation made by Congress; and as the damage, whatever it may be, which you may have sustained, has resulted from the omission of that body to meet your claim in due time, I am of the impression that the subject is within the sphere of its jurisdiction only.

(h) Number 9. Amount claimed for damage in consequence of the augmented price of the whiskey part of the ration, as you allege, in consequence of the duty on licenses for stills. Whatever damage you may have sustained under this head, has resulted from the act of Congress, and it belongs to that body only to determine whether any remuneration shall be made.

(i) Number 2. In a supplementary report, is the amount charged for damages on two bills of exchange, drawn by you and protested by the Department. I consider this as decided by the then Secretary of War, who, in his letter to you of the 31st October, 1814, informed you that it was impossible to pay your drafts until a final settlement of your accounts; after this decision, I cannot, at this distant period, enter into the question, whether the then existing usage, or any other circumstances connected with your contract, authorized you in drawing without the assent of the department. Under the old contract system, it was considered prudent not to advance on the last quarter's supply, or at least on a large portion of it, and not to pay until the final adjustment of the account. It was certainly prudent to retain in the hands of the government a sufficient sum to enforce a settlement of accounts, and to meet any claim of damages which the government might have against the Contractor. As far as I am informed, such was the practice. Thus, in the case of Mr. Cheever, your successor, although he received a large amount during the last quarter, still, on the settlement of his contract on the 12th of January, 1816, more than seven months after the termination of his contract, there

(h) The rise in the price of whiskey is estimated by respectable distillers at 20 cents per gallon, which would be the real damage ; but I have estimated it, by the official returns of 1815, and revenue of 1814, at  $14\frac{1}{2}$  cents. The actual rise after the contract was made, and on the immediate passage of the law, July, 1813, was upwards of 25 cents per gallon.

(i) "I consider this as decided by the then Secretary of War, who, in his letter to you of 31st October, 1814, informed you it was impossible to pay your draft until a final settlement of your account."

I have so fully answered every objection to this claim in my appendix, page 3, that I could not suppose any other reason could possibly exist. I think I have shown conclusively, that the claim is much stronger than that which called for the general decision of Secretary Crawford, of 27th January, 1816. "To allow all claims supported by evidence of loss, sustained by payment of *interest* and damages, in consequence of the department being unable to make the necessary *advances*." What were the 'necessary advances ;' the amount required for the disbursement of each quarter predicated upon *statements*, or the actual issue of the preceding quarter ; this was the usage and this was the law under the "old contract system," and which obtained for the government *favourable contracts*. A letter from the department, forbidding me to draw "a priori," could not impair my rights, for it was expressly provided for by my official note at the time of making the contract, exclusive of the usage and direction of government,

was found due to him the sum of \$251,983 26. The case of Mr. Piatt, to which you refer to support this claim, is distinguishable from it in several particulars, and among others, that the drafts on which the damages were allowed, were drawn by previous assent or arrangement of the Department.

Numbers 3 and 4. Supplementary. This claim, in its nature, is analogous to the last, and the reasons which apply to it, apply with equal or greater force to this.

Number 5. Supplementary. Damage for discount on treasury notes. This charge is not admissible by the Department, and is of such a nature that it can only be acted on by Congress.

(k) Number 6. Supplementary. Claim for transportation of flour and whiskey, from Alexandria, over land, to New-York, during the blockade. The claim is not provided for by the contract, nor do I think there is any equitable foundation for it. It is not improbable, that on entering into the contract, you may have had in view the flour and whiskey markets of Alexandria, and with the advantages of the transportation, by water, to New-York; but I cannot imagine that the hazard of blockade, and thereby the loss of the cheap and easy mode of transportation, by water, should be the loss of the government, and not of the Contractor, unless expressly stipulated for in the contract.

(l) Number 7. Amount charged for damages on account of General Hampton's forbidding you to issue provision to the troops in the summer of 1813. This claim being in part allowed, has of course been recognised as resting on just grounds. The question, then, is only as to the amount of damages. You claim  $12\frac{1}{2}$  per cent. and one cent per ration, amounting to \$14,343 75 on all the provision issued during the suspension, and have been allowed the  $12\frac{1}{2}$  per cent. amounting to \$9,843 75. You now claim one cent per ration on the number issued. I understand the greater part of the rations issued, for the period in question, were from the public deposit, so that the question of profit on the purchase of provisions is in a great degree excluded, and the only one left is upon the profits of the issue. Thus viewed, although it may be uncertain what extent of damage you actually sustained, by the loss of the issues, yet it



“to draw as I make my purchases.” To plead a letter in bar of my demand, written by the head of the Department, subsequently to the reception of the drafts, is preposterous, and is adding insult to injury; it is telling me, after the damages were incurred, we advised you. The fact is, the drafts were made five days previous to the date of Mr. Monroe’s letter of 31st October, 1814, and yet this is the defence set up.

(k) It was previously stipulated that I should resort to their markets for flour and whiskey, and the government interfered in the *whole shipment by water*; the “shipment by small parcels” could not be effected. [See opinions on this case, page 136 and 137, and appendix, page 13.]

(l) “Yet it is manifest, the damage must be much less than you claim, and probably considerably less than that which has been allowed.”

It is certain, that two assertions without evidence will not make one fact. The damages were estimated at the time by certificates at \$20,000; and as before observed in the Appendix, *the government assumed* the ratio of damages to the extent of the allowance under the contract of issue, “ $12\frac{1}{2}$  per cent. and one cent for each ration;” yet I am now told, the first allowance probably exceeded the damage. Can we estimate the damages for slander, or for loss of credit, by our bills being dishonoured? It is the law of merchants that regulates the latter, and a jury of our country the former. In the case of arbitration by the United States v. Messrs. Johnson, it was decided, that the government, doing or executing a

is manifest that it must be much less than the amount you claim, and probably considerably less than that which has been allowed. Your claim goes upon the ground, that the one cent for issue and  $12\frac{1}{2}$  per cent. for wastage, &c. are clear profits, and make no allowance for the hazard, cost, and wastage, which must always attend the issue of provisions, to cover which, and to allow a reasonable profit,  $12\frac{1}{2}$  per cent. and one cent a ration are allowed to the contractor for issuing, on which, in this case, your damage on the loss of the issuing ought to be limited to the profit only.

Number 8. Supplementary. Amount of claim for value of beef hides captured. The hides were the property of the Contractor, and consequently the government is not responsible. (*m*)

Number 9. Supplementary. Claim for allowance of  $12\frac{1}{2}$  per cent. for leakage and wastage, and one cent for issue, for provisions issued to troops descending the St. Lawrence. In no view, which I can take of this claim, does it appear to me to be well founded. If the provisions were drawn from depot placed on board the public boats, it is manifest that the contractor has already been allowed the amount claimed; but if they were provisions from the contractor's own stores, it is equally clear that he was entitled to a credit only on the issue of the provisions, without any allowance for wastage or leakage, or one cent per ration for issue. (*n*) The Second Comptroller is furnished with a copy of this communication. The enclosed is a list of papers accompanying your claim, herewith returned to you.

I am, Sir,

Respectfully,

Your obedient servant,

J. C. CALHOUN.

(Signed)

E. ANDERSON, Esq.

contract without the consent of the contractor, did not deprive him of his full right and demand, although he did not perform the duty.

(m) The hides being the property of the contractor, the question now is, were they necessarily used in transporting the rations ; and if so, is not payment expressly provided for by the 6th article of the contract.

(n) I have stated the facts to my own knowledge in my Appendix, and need not repeat them here. Now, what is the inference from the Hon. Secretary's observations ; let them be answered by the general article of the contract.

1st—"That for all rations required within the enemy's territory, the price of the ration shall be augmented in proportion to the expense of transportation and *issue* in the enemy's country." 2d—And when deposits are ordered, [in this instance, being on board of boats,] and issues made from such deposits, E. Anderson shall be called upon, and be allowed the  $12\frac{1}{2}$  per cent. and one cent for each ration. The Comptroller had suspended this claim for further consideration, and it was not *referable to the Secretary's decision*.

I cannot conclude without making my apology to the Committee of Claims, and members of both houses of Congress,

for the trouble I may have given them in requiring them to read this hasty and imperfect reply. I had once thought that the arguments had been exhausted, and that my replies to the objections raised by the Third Auditor, as printed with my other documents, would have proved satisfactory to every unprejudiced mind. To defend myself against the combined talents of the War and the Auditor's departments, was scarcely to be expected; yet I cannot have a better opportunity than the occasion affords, to tender my acknowledgments to the honourable Secretary of War, for his prompt condescension in taking my cases under his charge, and making a written and formal report on my claims, especially as it has been a matter of usage with that high officer to notice claims in ordinary, by the words "allowed" or "disallowed." That my case should call for so much argument and ingenuity, so much labour and talent, from that able officer, who had so many other and more important functions to attend to, is an evidence of the interest excited by my claims; and is matter of congratulation to myself, in as much as it has given to me, an humble and unpretending citizen, the power to set my rejoinder by the side of the honourable Secretary's report.

ELBERT ANDERSON

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*Note.*—"It is not the intention of the Hon. Secretary to censure," &c. He only meant that a contrast might be drawn between the economy, great savings, and accountability of the present system, and that which was followed under his predecessors. It is proper, therefore, that the nation should distinctly understand the nature of strict accountability and economy in the Provision Department of the Army; and, I trust, the task will not be difficult to show, that the Hon. Secretary has deceived himself as to the policy of the former administration, as well as to the rights and duties of the contractor; his misconception on this head being so apparent, that it has led us to believe that the stipulation and covenants of the contracts, and particularly of that of 25th February, 1813, have escaped his recollection. In our defence it therefore becomes necessary to recapitulate, and we can show the representatives of the people that our contract was economical for the nation, that the administration stands justified, and that the only admirable feature of the present system is the specific contract for provision in deposits or magazines at each post; which principle originated with the claimant, (see Expose, page 77,) and was introduced fully by the government in the contracts referred to. The simplicity of disbursement, the accountability and economy in the details of issue and commissary duty, can easily be shown to those who have the disposition and inclination to investigate them.

Previously to the war the army and troops of the United States were furnished with rations, delivered and issued at specific prices, and at the individual risk, expense, &c. of the contractor, but without the hazard of laying in large magazines for contingent supplies or military movements. If the United States called for larger deposits than the current issue, or convenience and interest of the contractor required, they could only order magazines at "fortified places," or where an army was in fact to be stationed. When deposits were made accordingly, the United States could issue by agents; but they could not call on the contractor to take a new risk, and expense of issue, by assuming a large mass of provisions at gross weight and measure, and compelling him to issue to a thousand different drafts and orders; they, therefore, found it their interest to allow the contractor, by a subsequent agreement, twelve and a half per cent. and one cent for each ration, and this rule was as old as the government. It was this difficulty of ordering deposits of supply, and issue from deposits, in the first stages of the war, that created embarrassment to the commanding general, who could not order a deposit where an army was not stationed, although secrecy and expedition required the provision before the troops were mustered. If the commanding general assumed the powers of commissary general to purchase, he was sure to pay a much greater price than the contractor. The celerity of military movement, so essential to success, depended on the talents and resources of the contractor, and if the commanding officer persisted in purchasing in any contract district, the consequence was immediate ruin to the incumbent contractor, and greater expense to the United States. Hence it was suggested to the government to modify the system to meet a state of war, and in the interim between the old and new contracts, to request the contractor for the northern frontier to purchase and lay up deposits and magazines.\* (Letter below.) It never was pretended that the contractor, who should volunteer his services to lay up such large supplies at the reduced price of the contract, (only thirteen and a half and fourteen cents each ration,) should be bound to receive them back, and issue them without a new and subsequent agreement.

A distinct understanding entered into the merits, and made a part of the contracts of 25th February, 1813: that the United States should call for deposits, and should call on the contractors to issue from such deposits, with the allowance of twelve and a half per cent. and one per cent. for each ration, as mentioned in the contract. Thus was a perfect system of accountability, and a cheap and efficacious mode of supply, secured within the state of New-York and its frontiers. This was a civil contract, at a specific price, and a civil commissariat, with allowance fixed by known rules of law. So simple was the change and charge of deposits from the United States to the contractor, that the account department never wanted to inquire after the provision; the

\*

*War Department, January 8th, 1812.*

SIR,

As some new arrangements are required in the Provision Department of the Army, I request you would be pleased to repair to the seat of government as soon as may be.

(Signed)

WM. EUSTIS.

E. ANDERSON, New-York.



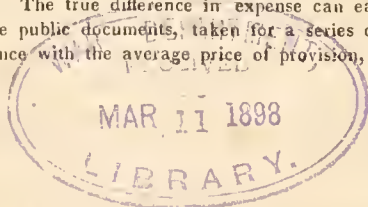
money price of the ration, with the gross amount of the deposit, was so much money paid to the contractor.

But a military commissariat or accountability is a very different affair. The United States may contract for the ration, or its constituent parts, (as is now done,) at a specific price, or wait the contingencies of demand, and authorize the general agent to purchase whatever he wants, or wherever he can find. In this case an accountability is incurred for the disbursing fund, and next the provisions are to be traced through all the ramifications of deputy commissaries, quartermasters, teamsters, &c. and this military accountability for the provisions in kind is attended with great sacrifices and losses to the government. Thus under the present system the agent has no interest in the safekeeping of the provision; the United States are the sufferers; the issuing officer is exempt, his vouchers of casualties being his discharge. And although he receives regular pay and rations, he has a contingent allowance for leakage and wastage, varying according to the will of the department. They order this differently in other governments; issuing commissaries have fixed rules of pay, and determined rates of allowance.

In the civil contract system adopted by the government in the state of New-York, no failure took place; the price of the ration and the commissariat allowance was fixed by rule of contract; if the contractor was to make a fortune, it was like all other mercantile hazards and contingencies. In cases of deficiency, condemnation, or failure of supply, the surety was good, the responsibility simple, and the guarantee ample; the commanding officer could purchase and issue at a given price, and the contractor was accountable for any difference.

In the military purchase, failures did take place; the rise and fall of the markets was a matter of indifference to the commissaries, (and the competition of the agents of the government does produce an immediate rise and apparent scarcity,) no losses or casualties in the movements of the troops on land or water are chargeable to them; the responsibility is so divided and subdivided, that it is lost in the hurry of a military movement.

Both systems have been tried in peace, and in the critical times of revolutionary war; the preference was given to the contract. And where the commissary has been substituted on the frontiers, in our wars with the Indians, it generally has broken down; and even when sustained by the vigour and talents of General Jackson, the soldier has suffered great privations. If the soldier receives half a ration, his murmurs are stifled by military discipline, under commissary purchase. Under the contract, the officer purchases the deficiency, and throws the blame and loss, as it ought to be, on the contractor. The true difference in expense can easily be shown by reference to the public documents, taken for a series of years, the actual cost of subsistence with the average price of provision, and the number of men supplied.















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